FEDERAL REGISTER

VOLUME 5 NUMBER 205

Washington, Saturday, October 19, 1940

Rules, Regulations, Orders

TITLE 19—CUSTOMS DUTIES

CHAPTER I—BUREAU OF CUSTOMS

[T. D. 50248]

AIRPORT OF ENTRY

BUFFALO LAUNCH CLUB SEAPLANE BASE, BUFFALO, NEW YORK, DESIGNATED AS AN AIRPORT OF ENTRY FOR A PERIOD OF ONE YEAR [1]

OCTOBER 16, 1940.

The Buffalo Launch Club Seaplane Base, Buffalo, New York, is hereby designated as an airport of entry for civil aircraft and merchandise carried thereon arriving from places outside the United States, as defined in section 9 (b) of the Air Commerce Act of 1926 (U.S.C. title 49, sec. 179 (b)), for a period of one year from the date of this order. (Sec. 7 (b), 44 Stat. 572; 49 U.S.C. 177 (b))

[SEAL] HERBERT E. GASTON,
Acting Secretary of the Treasury.

[F. R. Doc. 40-4407; Filed, October 17, 1940; 4:10 p. m.]

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER II—RAILROAD RETIREMENT BOARD

PART 325—REGISTRATION AND CLAIMS FOR BENEFITS

REGULATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT

Pursuant to the authority contained in section 12 of the Act of June 25, 1938 (52 Stat. 1094, 1107; 45 U.S.C. Sup. IV, 362) as amended by the Act of June 20, 1939 (53 Stat. 845; Public No. 141, 76th Congress, First Session), the Railroad Retirement Board amends Part 325 [2] of the Regulations under the Railroad Unemployment Insurance Act by inserting therein, as § 325.06, the following:

§ 325.06 *Transitional provision.* Notwithstanding any other provisions of these regulations, each registration period begun subsequent to October 17, 1940, and prior to November 1, 1940, shall end on whichever is the earliest of (a) the fourteenth day after such period began, (b) the last day for which the employee registers prior to or at the time he secures his first authorization, on or after November 1, 1940, to change his place of registration, or (c) the last day prior to the first day on or after November 1, 1940, for which he registers with an unemployment claims agent other than the one, or the alternate or successor of the one, with whom he last registered on or prior to October 31, 1940. There shall not be considered as a day of unemployment in any "half-month" any day subsequent to the end of a registration period begun subsequent to October 17, 1940, and prior to November 1, 1940. [B. O. 40-585, dated October 10, 1940]

By Authority of the Board.
[SEAL] JOHN C. DAVIDSON,
Secretary.

Dated October 17, 1940.

[F. R. Doc. 40-4408; Filed, October 18, 1940; 9:53 a. m.]

TITLE 30—MINERAL RESOURCES

CHAPTER III—BITUMINOUS COAL DIVISION

PART 335—MINIMUM PRICE SCHEDULE, DISTRICT NO. 15

MINIMUM PRICES F. O. B. MINE FOR COAL SHIPPED BY RAIL TO MARKET AREA NO. 204—EASTERN NEBRASKA

Correction

On page 3366 of the FEDERAL REGISTER for Wednesday, August 28, 1940, the first group of leader lines numbered 1 through 11 under the column headed "Prod. group No." should be moved up on line so that figure 1 is opposite figure 245, figure 2 is opposite figure 230, etc.

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NOTICES

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[1] This document affects the tabulation in 19 CFR 4.13.
[2] 5 F.R. 2111.

FEDERAL REGISTER

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CONTENTS—Continued

TITLE 36—PARKS AND FORESTS

CHAPTER I—NATIONAL PARK SERVICE

PART 3—NATIONAL PARK REGULATIONS

ARTICLE 12 OF THE PARK REGULATIONS AMENDED

Article 12 of the Park Regulations promulgated to facilitate the administration of the park system of the District of Columbia and approved June 16, 1927, by the President of the United States, is hereby amended by the addition of the following new section:

§ 3.11 *Traffic and motor vehicle regulations; horses; penalties.*

* * * * *

(V) The speed limits prescribed by Section 22 (c) of the Traffic and Motor Vehicle Regulations for the District of Columbia shall not apply to vehicles operated on the Rock Creek and Potomac Parkway nor any highway in Rock Creek Park and the East and West Potomac Parks. [Sec. 13a]

HAROLD L. ICKES,
Secretary of the Interior.

THE WHITE HOUSE,
October 2, 1940.

Approved:

FRANKLIN D ROOSEVELT

[F. R. Doc. 40-4412; Filed, October 18, 1940; 10:13 a. m.]

TITLE 47—TELECOMMUNICATION

CHAPTER I—FEDERAL COMMMUNICATIONS COMMISSION

PART 4—RULES GOVERNING BROADCAST SERVICES OTHER THAN STANDARD BROADCAST

INTERNATIONAL BROADCAST STATIONS

The Commission on October 15, 1940, effective immediately, added paragraphs (f) (1), (2), and (3), to § 4.43, to read as follows:

§4.43 *Service; commercial or sponsored programs.*

* * * * *

(f) (1) Each licensee of an international broadcast station shall make verbatim mechanical records of all international programs transmitted.

(2) The mechanical records, and such manuscripts, transcripts, and translations of international broadcast programs as are made shall be kept by the licensee for a period of two years after the date of broadcast and shall be furnished the Commission or be available for inspection by representatives of the Commission upon request.

(3) If the broadcast is in a language other than English the licensee shall furnish to the Commission upon request such record and scripts together with complete translations in English. (Sec. 4 (i), 48 Stat. 1066; 47 U.S.C. 154 (i)—Sec. 303 (j), 48 Stat. 1082; 47 U.S.C. 303 (j)) [Sec. 42.03, F.C.C., May 23, 1939, 4 F.R. 2189]

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 40-4419; Filed, October 18, 1940; 11:51 a. m.]

Notices

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. A-87]

PETITION OF DISTRICT BOARD 12 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF CERTAIN MINES NOT HERETOFORE CLASSIFIED AND PRICED

NOTICE OF AND ORDER FOR HEARING AND GRANTING TEMPORARY RELIEF

An original petition, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party;

It is ordered, That a hearing in the above-entitled matter under the applicable provisions of said Act and the rules of the Division be held on October 28, 1940, at 10 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, 734 Fifteenth Street NW., Washington, D. C. On such day the Chief of the Records Section in Room 502 will advise as to the room in which such hearing will be held.

It is further ordered, That Charles S. Mitchell or any other officer or officers of the Division duly designated for that purpose shall preside at the hearing in such matter. The officers so designated to preside at such hearing are hereby authorized to conduct said hearing, to administer oaths and affirmations, examine witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiry, to continue said hearing from time to time, and to prepare and submit to the Director proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearing is hereby given to all parties herein and to persons or entities having an interest in these proceedings and eligible to become a party herein. Any person desiring to be admitted as a party to this proceeding may file a petition of intervention in accordance with the rules and regulations of the Bituminous Coal Division for proceedings instituted pursuant to section 4 II (d) of the Act, setting forth the facts on the basis of which the relief in the original petition is supported or opposed or on the basis of which other relief is sought. Such petitions of intervention shall be filed with the Bituminous Coal Division on or before October 25, 1940.

The matter concerned herewith is in regard to the establishment of effective minimum prices for the coals of certain mines, hereinafter referred to, located in District 12 for which coal price classifications and minimum prices have not heretofore been established.

All persons are hereby notified that the hearing in the above-entitled matter and any orders therein may concern, in addition to the matters specifically alleged in the petition, other matters necessarily incidental and related thereto, which may be raised by amendment of the original petition, petitions of interveners, or otherwise, or which may be necessary corollaries to the relief, if any, granted on the basis of said original petition.

It is further ordered, That, a reasonable showing of the necessity therefor having been made, pending final disposition of the petition in the above-entitled matter, temporary relief be, and it hereby is, granted as follows: Commencing

forthwith the coals referred to in the schedule hereto annexed, marked "Temporary Schedule A", and made part hereof, shall be subject to minimum prices as provided in said Temporary Schedule A.

Notice is hereby given that applications to stay, terminate or modify the temporary relief herein granted may be filed pursuant to the rules and regulations governing practice and procedure before the Bituminous Coal Division and proceedings instituted pursuant to section 4 II (d) of the Bituminous Coal Act of 1937.

Dated, October 12, 1940.

[SEAL] H. A. GRAY,
Director.

TEMPORARY SCHEDULE A [1]

Temporary Effective Minimum Prices for District No. 12 for Truck Shipments (Prices in Cents Per Net Ton for Shipment Into All Market Areas)

Code member index	Mine no.	Group no.	County	Chunk	Standard, lump	Egg, 8 x 2", 6 x 2"	Small Egg, 4 x 2", 3 x 1½"	Mine run	Nut 2 x 1¼", 1¼ x ¾"	Dom. Stoker, 1¼", 1 x 9/16"	Screenings, 2", 1½", 1¼ x 0	Ind. Stoker, Cr. 2", 1½", 1¼" x 0	9/16" x 0
				1	2	3	4	5	6	7	8	9	10
Angus Coal Mining Company	659	20	Jasper	320	310	300	290	280	280	280	170	230	100
Baker Coal Co. (Raymond H. Baker)	470	21	Marion	345	335	325	315	300	300	300	180	240	100
Ballard, Lena (Ballard Coal Co.)	638	2	Appanoose	285	275	265	255	275	265	275	200	275	100
Barnett Coal Co. (John M. Barnett)	651	19	Marion	310	300	290	280	270	270	270	170	230	100
Beck Coal Co	226	25	Polk	370	360	350	340	300	325	330	200	260	100
Black Hawk Coal Co. (Harold E. Kelley)	347	31	Boone	385	375	365	355	375	325	330	210	270	100
Bussey Coal Company (Harry Miller)	658	18	Marion	300	290	280	270	270	270	270	160	220	100
Blazina, Frank (Waterlily Coal Co.)	643	3	Appanoose	285	275	265	255	275	265	275	200	275	100
Conner Coal Co. (W. H. Conner)	639	15	Lucas	295	285	275	265	270	270	270	160	220	100
Crow Hollow Coal Co. (Ray Davis)	630	18	Marion	300	290	280	270	270	270	270	160	220	100
Denicola, Frank	645	20	Marion	320	310	300	290	280	280	280	170	230	100
Diamond Coal Co. (John Porter)	320	2	Appanoose	285	275	265	255	275	265	275	200	275	100
Doodle Bug Coal Co. (W. V. Barth)	627	18	Marion	300	290	280	270	270	270	270	160	220	100
Duer, Chester (North Chariton Coal Co.)	411	4	Appanoose	285	275	265	255	275	265	275	200	275	100
Eddleman, H. E	657	13	Mahaska	290	280	270	260	270	270	270	160	220	100
Edwards & Company, G. P. (A. M. McClevey)	652	25	Polk	370	360	350	340	300	325	330	200	260	100
Ellis, Roy C. (Roy C. Ellis Mining Co.)	660	23	Mahaska	320	310	300	290	275	275	275	170	230	100
Geddling & Sons (Lauron Geddling)	629	19	Marion	310	300	290	280	270	270	270	170	230	100
Graham Coal Co	633	11A	Monroe	300	290	280	270	270	270	270	180	240	100
Hegwood, Loren I. (Hegwood Coal Co.)	661	15	Lucas	295	285	275	265	270	270	270	160	220	100
Hoover, S. R	562	8	Van Buren	310	300	290	280	270	270	270	180	240	100
Howard, John W. (Howard Coal Co.)	608	11A	Monroe	300	290	280	270	270	270	270	180	240	100
Jensen, G. B	649	32	Webster	395	385	375	365	385	325	330	220	280	100
K. & R. Coal Co. (Dan Ridgway)	626	22	Mahaska	315	305	295	285	275	275	275	170	230	100
Lockwood, Homer (Lockwood Coal Company)	595	33	Adams	360	350	350	350	350	340	340	250	340	150
McCarty Coal Co. (J. M. Pyan)	640	15	Monroe	295	285	275	265	270	270	270	160	220	100
Mack, Albert (Mack Coal Co.)	634	33	Adams	360	350	350	350	350	340	340	250	340	150
Medearis, Harvey (Medearis Coal Co.)	641	15	Lucas	295	285	275	265	270	270	270	160	220	100
Meggison, Edward (Meggison Coal Co.)	334	33	Adams	360	350	350	350	350	340	340	250	340	150
Newton Coal Company (S. H. Vanderzyl)	644	27	Jasper	345	335	325	315	300	300	300	190	250	100
Old Egypt Coal Company (Chas. E. Brodwell)	635	3	Appanoose	285	275	265	255	275	265	275	200	275	100
Padavich Coal Co. (Charles Padavich)	646	3	Appanoose	285	275	265	255	275	265	275	200	275	100
Perry, C. L. (Perry Coal Company)	233	18	Marion	300	290	280	270	270	270	270	160	220	100
P. S. & R. Coal Co. (L. L. Payton)	628	19	Marion	310	300	290	280	270	270	270	170	230	100
R. & G. Coal Co., (Gabriel Kauzlarich)	637	1A	Appanoose	275	265	255	445	265	255	265	200	265	100
Renslow, Lloyd L. (Lloyd's Coal Co.)	643	29	Guthrie	385	375	365	355	375	325	330	210	270	100
Saner, Charley (Sage Creek Coal Co.)	642	15	Monroe	295	285	275	265	270	270	270	160	220	100
Smith, R. M	662	22	Mahaska	315	305	295	285	275	275	275	170	230	100
Spot Coal Co. (Frank D. Shultz)	409	28	Greene	383	373	363	353	313	323	328	208	268	100
Strother, J. P	636	6	Wapello	295	285	275	265	270	270	270	180	240	100
Twin City Coal Co. (Wm. Russell, Jr.)	633	17	Marion	310	300	290	280	270	270	270	165	225	100
W. & W. Coal Co. (Peter J. Willis)	617	4	Wayne	285	275	265	255	275	265	275	200	275	100
White Oak Coal Co. (Charles Lamantia)	589	1A	Appanoose	275	265	255	245	265	255	265	200	265	100
Young Coal Co. (Martin Fenton & Floyd Cross)	523	4	Appanoose	285	275	265	255	275	265	275	200	275	100

[F. R. Doc. 40-4367; Filed, October 15, 1940; 4:01 p. m.]

[Docket Nos. A-32, A-33]

PETITION OF THE GUYAN EAGLE COAL COMPANY, A CODE MEMBER IN DISTRICT NO. 8, FOR A REDUCTION OF THE EFFECTIVE MINIMUM PRICES IN SIZE GROUPS 18 TO 21, INCLUSIVE; PETITION OF THE BUFFALO CHILTON COAL COMPANY, A CODE MEMBER IN DISTRICT NO. 8, FOR A REDUCTION OF THE EFFECTIVE MINIMUM PRICES IN SIZE GROUPS 1 TO 4, INCLUSIVE, AND 18 TO 21, INCLUSIVE

MEMORANDUM OPINION AND ORDER

The original petition in Docket No. A-32 prays for the issuance of temporary and final orders changing the price classifications for petitioner's Guyan No. 1 Mine (Mine Index No. 226) in size groups 18 to 21, inclusive, from "F" to "H".

The original petition in Docket No. A-33 prays for the issuance of temporary and final orders changing the price classifications for petitioner's Buffalo No. 1 Mine (Mine Index No. 76) in size groups 1 to 4, inclusive, from "Q" to "R" and in size groups 18 to 21, inclusive, from "E" to "G".

The Bituminous Coal Producers Board for District No. 7 and the Island Creek Coal Company, a Code Member with mines in District No. 8, have intervened in opposition to the original petitions.

On October 4, 1940, an informal conference concerning the matter of temporary relief in the above-entitled matters, was held by this Division, pursuant to § 301.106 (d) of the Rules and Regulations Governing Practice and Procedure Before the Bituminous Coal Division in Proceedings Instituted Pursuant to section 4 II (d) of the Bituminous Coal Act of 1937 (the "Rules"). The conference was held upon telegraphic notice, sent on October 1, 1940, to District Board 8, to the Statistical Bureau for that district, the Consumers' Counsel and the petitioners. The District Board was instructed to notify interested Code Members of the conference and the Statistical Bureau was instructed to post conspicuously the notice of the conference.

Represented at the conference were the original petitioners; District Board 8; District Board 7; and Island Creek Coal Company.

District Board 7 moved that the original petitions be dismissed on the ground that they failed to comply with § 301.102 (b) (1) (i) and § 301.102 (b) (1) (ii) of the Rules. The Island Creek Coal Company filed similar motions.

At the informal conference, the petitioner, Buffalo Chilton Coal Company, did not press its request for temporary relief relative to size groups 1 to 4, inclusive. Both petitioners, however, contended that they could not continue in business if the temporary relief requested relative to size groups 18 to 21, inclusive, were denied; that in the event temporary orders changing the price classifications, as requested, in size groups 18 to 21, inclusive, were entered, petitioners would not thereby enjoy any business other than that which they heretofore had and that their coal was generally inferior analytically to other coals having similar classifications. Subsequent to the informal conference and on October 7, 1940, J. R. Fields, the Secretary and Treasurer of each petitioner, submitted affidavits in order to substantiate these contentions. These affidavits also indicate that subsequent to the conference some coal was sold by the petitioners at the effective minimum prices. District Board 8, by its representatives, indicated that a majority of its Classification Committee were of the opinion that classifications in size groups 18 to 21, inclusive, for the mine of petitioner, Guyan Eagle Coal Company, should be changed from "F" to "G" and that its Classification Committee was of the opinion that classifications in size groups 18 to 21, inclusive, for the mine of petitioner, Buffalo Chilton Coal Company, should be changed from "E" to "G", and that such

[1] The material in this Temporary Schedule A is to be read in the light of the classifications, prices, instructions, exceptions, and other provisions contained in Price Schedule No. 1 for this District and supplements thereto.

changes would not prejudice other Code Members in District 8 or otherwise.

While it does not clearly appear how many producers would be affected by the granting of the temporary relief requested by the original petitioners, there is reason to believe that a considerable number of producers would be adversely affected thereby. Moreover, the issues involved are highly controversial and the defects in the petitions have probably resulted in a failure to show fully the situations involved. The Director is therefore of the opinion that decision on the matter of temporary relief should be deferred until the facts are more fully developed. The matter of temporary and final relief will be set for an early formal hearing. The Director reserves jurisdiction to further consider the prayers for temporary relief on the basis of the record to be made therein.

The motions of District Board 7 and the Island Creek Coal Company to dismiss the original petitions herein should be denied. In the event that the petitioners should fail to serve and file amended petitions within seven (7) days from the date hereof, setting forth with particularity the information required by §§ 301.102 (b) (1) (i) and 301.102 (b) (1) (ii) of the Rules, District Board 7 or the Island Creek Coal Company may renew their motions to dismiss the original petitions herein.

Accordingly it is so ordered.

Dated, October 16, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40-4406; Filed, October 17, 1940; 3:48 p. m.]

[Docket Nos. A-17, A-35, A-77]

PETITION OF DISTRICT BOARD 16 FOR REDUCTION IN THE EFFECTIVE MINIMUM PRICES APPLICABLE TO THE MOORE STRIP MINE, FOR REDUCTION IN EFFECTIVE MINIMUM PRICES FOR SHIPMENTS OF COAL BY TRUCK TO AN INDUSTRIAL OR PUBLIC UTILITY PLANT WHICH HAS RAILROAD FACILITIES FOR RECEIVING COAL, FOR MODIFICATION OF PRICE INSTRUCTION AND EXCEPTION 5 IN THE EFFECTIVE MINIMUM PRICE SCHEDULES FOR DISTRICT 16, AND FOR MODIFICATION OF SECTION V, RULE 4, AND SECTION VI, RULE 3 OF THE MARKETING RULES AND REGULATIONS; PETITION OF DISTRICT BOARD 16 FOR THE ESTABLISHMENT OF PRICE CLASSIFICATIONS AND MINIMUM PRICES FOR THE COALS OF CERTAIN MINES NOT HERETOFORE CLASSIFIED AND PRICED; PETITION OF DISTRICT BOARD 16 FOR AMENDMENT OF SECTION XI, RULE 1, PARAGRAPH F OF THE MARKETING RULES AND REGULATIONS

NOTICE OF AND ORDER FOR HEARING AND ORDER GRANTING, IN PART, TEMPORARY RELIEF

Original petitions, pursuant to section 4 II (d) of the Bituminous Coal Act of 1937, having been duly filed with this Division by the above-named party;

It is ordered, That hearings in the above-entitled matters under the applicable provisions of said Act and the rules of the Division be held on November 12, 1940, at 10 o'clock in the forenoon of that day, at a hearing room of the Bituminous Coal Division, 734 Fifteenth Street NW., Washington, D. C. On such day the Chief of the Records Section in Room 502 will advise as to the room in which such hearing will be held.

It is further ordered, That W. A. Shipman or any other officer or officers of the Division duly designated for that purpose shall preside at the hearings in such matters. The officers so designated to preside at such hearings are hereby authorized to conduct said hearings, to administer oaths and affirmations, examine witnesses, compel their attendance, take evidence, require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material to the inquiries, to continue said hearings from time to time, and to prepare and submit to the Director proposed findings of fact and conclusions and the recommendation of an appropriate order in the premises, and to perform all other duties in connection therewith authorized by law.

Notice of such hearings is hereby given to all parties herein and to persons or entities having an interest in these proceedings and eligible to become a party herein. Any person desiring to be admitted as a party to these proceedings may file a petition of intervention in accordance with the rules and regulations of the Bituminous Coal Division for proceedings instituted pursuant to section 4 II (d) of the Act, setting forth the facts on the basis of which the relief in the original petitions is supported or opposed or on the basis of which other relief is sought. Such petitions of intervention shall be filed with the Bituminous Coal Division on or before November 7, 1940.

The matters concerned herewith are in regard to: (1) The matter of reducing the effective minimum prices applicable to the Moore Strip Mine for rail shipment of coal, other than railroad fuel into Market Areas 40-75, 204-211, and 215, in Size Groups 2, 3, and 5. (2) The matter of reducing prices for shipments of coal by truck to an industrial or public utility plant which has railway facilities for receiving coal. (3) The matter of modifying Price Instruction and Exception 5 in the Effective Minimum Price Schedules for District 16. (4) The matter of modifying Section V, Rule 4, and Section VI, Rule 3, of the Marketing Rules and Regulations. (5) The Matter of establishing minimum prices for the Washington Mine, the Sudduth Mine, and the O. K. #2 Mine, located in District No. 16. (6) The matter of amending Section XI, Rule 1, Paragraph F of the Marketing Rules and Regulations to provide that in all sub-districts of District 16, 2½" x 0 slack may be substituted for 1½" x 0 slack without prior approval of the Director on sales made to plants located in Market Areas 217 and 218, which pulverize the coal for use in such plants.

All persons are hereby notified that the hearings in the above-entitled matters and any orders therein, may concern, in addition to the matters specifically alleged in the petition, other matters necessarily incidental and related thereto, which may be raised by amendment of the original petitions, petitions of interveners or otherwise, or which may be necessary corollaries to the relief, if any, granted on the basis of said original petitions.

It is further ordered, That a reasonable showing of necessity therefor having been made, pending the final disposition of the petitions in the above-entitled proceedings, that temporary relief be and the same hereby is granted to the extent that the Effective Minimum Price Schedule for District No. 16 is amended, as follows:

(1) At page 1 of said Schedule add:

15. Prices on industrial coal, size groups 10-11 and 12 only, may be reduced 25 cents per ton below the applicable prices when delivered by truck direct from the mine to an industrial or to a public utility plant, which has railway facilities for receiving coal at the plant, and which receives coal in carload quantites; Provided, however, that such reduction shall not apply unless the Code member has received a written purchase order from the plant to which the coal is to be delivered; and in every such case a copy of the written purchase order shall be filed with the Statistical Bureau for District 16 promptly after the order is filled.

(2) At page 1 of said Schedule add:

16. In all subdistricts of District 16, 2½" x 0 slack (Size Group 19) may be substituted for 1½" x 0 slack (Size Group 11) on sales made to plants located in Market Areas 217 and 218, which pulverize the coal for use in such plants.

(3) At page 2 of said Schedule add:

The Clayton Coal Company, Washington Mine, Mine Index No. 21, Weld County, Subdistrict No. 6, prices page 6, Rail, page 8, truck.

Jackson, J. C. Sudduth Mine, Mine Index No. 111, Jackson County, Subdistrict No. 11, prices page 6, Rail, page 9, truck.

(4) At page 3 of said Schedule add:

Zaptiff, Ross (O. K. Coal Co.) O. K. #2 Mine, Mine Index No. 138. Boulder County, Subdistrict No. 7, prices page 6, Rail, page 9, truck.

(5) At page 8 of said Schedule add:

The Clayton Coal Company, Washington Mine, Weld County, is subject to the same prices as shown for Subdistrict No. 6.

Zaptiff, Ross (O. K. Coal Co.), O. K. #2 mine, Boulder County, is subject to the same prices as shown for Subdistrict No. 7.

(6) At page 9 of said Schedule add:

Jackson, J. C., Sudduth Mine, Jackson County, is subject to the same prices as shown for the Marr Mine in Subdistrict No. 11.

Notice is hereby given, that the applications to stay, terminate, or modify the temporary relief herein granted may be filed pursuant to the Rules and Regulations governing practice and procedure before the Bituminous Coal Division and proceedings instituted pursuant to Section 4 II (d) of the Bituminous Coal Act of 1937.

Dated: October 17, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40-4413; Filed, October 18, 1940; 10:13 a. m.]

Bureau of Reclamation.

[No. 25]

ORLAND IRRIGATION PROJECT

PUBLIC NOTICE OF ANNUAL WATER RENTAL CHARGES [1]

OCTOBER 3, 1940.

1. Announcement is hereby made that, pending the cancellation of water rights on lands now delinquent in the payment of charges due the United States and the transfer of said water rights to other lands in private ownership that can be served from the constructed canal system, or minor extensions, on the Orland project, California, water will be furnished during the irrigation season of 1941 upon approved applications for temporary water service for the irrigation of such other lands, upon a water rental basis, at the following rates and terms.

2. The minimum water rental charge for the lands to be irrigated under the provisions of this public notice shall be one dollar and sixty cents ($1.60) per irrigable acre, which charge will permit the delivery of not to exceed three acre feet of water per acre. Additional water will be furnished at the rate of forty cents ($0.40) per acre foot. The minimum charge defined above will be due and payable at the time that application for temporary water service is filed and no water will be delivered until the minimum charge has been paid in full. Charges for additional water at the rates above specified must be paid in advance of the delivery of additional water and no advance payments shall be accepted in sums of less than $10.00 which would permit the delivery of 25 acre feet at the rate specified.

3. All charges for water rental service are to be paid to the Bureau of Reclamation, Orland, California.

A. J. WIRTZ,
Under Secretary.

[F. R. Doc. 40-4409; Filed, October 18, 1940; 10:12 a. m.]

[1] Act of June 17, 1902, 32 Stat., 388, as amended or supplemented.

[No. 52]

YUMA IRRIGATION PROJECT, ARIZONA VALLEY DIVISION

PUBLIC NOTICE OF WATER RIGHTS FOR PRIVATE LAND ONLY

OCTOBER 3, 1940.

1. *Land for which water will be furnished.* In pursuance of the act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, notice is hereby given that upon proper water-right application being made therefor, water will be furnished under the Valley Division of the Yuma Irrigation Project, Arizona, in the irrigation season of 1940 and thereafter, for the following described private lands:

Gila and Salt River Base and Meridian, Arizona

	Irrigable Acreage
T. 8 S., R. 23 W.,	
Section 20, part of S½NW¼SE¼	3.75
T. 8 S., R. 24 W.,	
Section 35, W½SW¼SE¼	20.00
T. 9 S., R. 24 W.,	
Section 2, SE¼SW¼	33.00
Section 10:	
SW¼NE¼	38.00
NW¼SE¼	40.00
Section 11:	
S½NW¼NE¼	20.00
South 6 acres NE¼SW¼	6.00
SE¼SW¼	34.00
South 6 acres NW¼SE¼	6.00
SW¼SE¼	40.00
Section 14:	
NE¼NW¼	37.20
SW¼NW¼	39.00
SE¼NW¼	32.80
T. 10 S., R. 24 W.,	
Section 13:	
NE¼SW¼	13.00
NW¼SW¼	12.00
Section 14:	
NE¼SE¼	12.00
NW¼SE¼	21.00
Section 31:	
NE¼NW¼	37.00
Lot 1	39.00
Lot 2	32.00
SE¼NW¼	31.00

Supplemental diagrams showing the lands described were approved on the date of this notice and are on file in the office of the Superintendent at Yuma, Arizona, and in the local land office at Phoenix, Arizona.

2. *Limit of area for which water right may be secured.* The maximum limit of area for which water-right application may be made for lands in private ownership is 160 acres of irrigable land for each owner.

3. *Application for water rights.* All water-right applications must be made to the Superintendent of the Bureau of Reclamation, Yuma, Arizona, upon forms provided for that purpose, and may be made on or after the date of this notice.

4. *Classes of charges for water rights.* The water-right charges are of two kinds, to-wit: (a) A charge against each irrigable acre to cover the cost of construction of the irrigation system termed the construction charge; and (b) An annual charge against each irrigable acre to cover the cost of operation and maintenance of the system, termed the operation and maintenance charge.

5. *Construction charge.* The construction charge for the lands described in paragraph 1 herein shall be One Hundred twenty-three dollars and nine cents ($123.09) per irrigable acre, payable as follows:

(a) For lands that were, prior to August 13, 1914, subjected by contract or otherwise to the provisions of the Reclamation law, one hundred eighteen dollars and nine cents ($118.09) per irrigable acre shall be paid in ten equal annual instalments, the first of which shall be paid at the time of filing water-right application, and subsequent instalments shall be due and payable December 1 of each year thereafter: *Provided, however,* That if water-right application subject to the provisions of the Reclamation Extension Act (38 Stat. 686), or an acceptance of the provisions of said act, be filed within six months from the date of this notice, then and in that event said charge of one hundred eighteen dollars and nine cents ($118.09) per irrigable acre shall be payable in twenty instalments, the first of which shall become due and payable on December 1 following the date of water-right application, and subsequent instalments on December 1 of each year thereafter; in which event the first four instalments shall be each two per centum thereof, the next two instalments each four per centum thereof, and the next fourteen instalments each six per centum thereof.

(b) For the remaining land an initial payment of five per centum of one hundred eighteen dollars and nine cents ($118.09) per irrigable acre shall be made at the time of filing water-right application, and the remainder of said charge of one hundred eighteen dollars and nine cents ($118.09) per irrigable acre shall be paid in fifteen annual instalments, the first five of which shall each be five per centum of $118.09 per irrigable acre, and the remaining ten instalments each seven per centum thereof. The first of said fifteen annual instalments shall become due and payable December 1 of the fifth calendar year after the initial instalment and subseqent instalments shall become due and payable on December 1 of each calendar year thereafter.

(c) For all lands covered by this notice, five dollars ($5.00) per irrigable acre shall

be paid as provided in the act of June 5, 1924 (43 Stat. 416), in twelve equal annual instalments, the first of which shall be due and payable at the time of filing water-right application, and subsequent instalments on December 1 of each year thereafter.

6. *Increased construction charge in certain cases.* In all cases where water-right application for lands in private ownership shall not be made within one year from the date of this notice, the construction charge for such land shall be increased five per centum each year until such application is made and an initial instalment is paid.

7. *Operation and maintenance charge.* For the irrigation season of 1940 and thereafter until further notice, the annual operation and maintenance charge shall be the same as for other like lands in the Valley Division under this project. Information on the amount of this charge will be furnished by the Superintendent, Bureau of Reclamation, Yuma, Arizona.

8. *Place and manner of payment of water charges.* All water charges must be paid in currency or by New York draft or money order. Payment of water charges made under the terms of the contract dated February 5, 1931 between the United States and the Yuma County Water Users' Association shall be remitted to Secretary, Yuma County Water Users' Association, Yuma, Arizona, and those not made under the provisions of such contract shall be payable to Agent-Cashier, Bureau of Reclamation, Yuma, Arizona.

9. *Exclusion of lands by action of Colorado River.* Every water-right application shall contain the following provisions:

The applicant hereby releases the United States from any and all claims for loss or damages on account of (1) the exclusion of said lands or any part thereof, from the irrigable lands of said project, or (2) the failure to supply water for the irrigation of any part of the lands hereinbefore described when such exclusion or failure is due to (a) the destruction by flood, erosion, encroachment, or other action of the Colorado River, of the levees erected by the Bureau of Reclamation along the banks of said river, or (b) a change in the location of said levees when such change is considered necessary by the proper officials of the United States to prevent the destruction of said levees from the said causes. Land so excluded shall be relieved from payment of all construction and of operation and maintenance charges which otherwise would thereafter become due from the lands so excluded, but construction and operation and maintenance charges theretofore paid on lands so excluded shall be retained by the United States.

10. If an acceptance of the terms of the contract dated February 5, 1931, between the United States and the Yuma County Water Users' Association is filed within sixty (60) days after filing of water-right application, then repayment of the construction charges shall be in accordance with the terms of such contract.

A. J. WIRTZ,
Under Secretary.

[F. R. Doc. 40-4410; Filed, October 18, 1940; 10:12 a. m.]

REGULATIONS TO GOVERN ISSUANCE OF RESIDENTIAL LEASES AND ESTABLISHING RENTAL RATES FOR RESERVED LANDS OF THE UNITED STATES IN BOULDER CITY, NEVADA

1. Lands within the exterior boundaries of Boulder City, Nevada, comprise public lands of the United States withdrawn for reclamation purposes pursuant to Section 3 of the Act of June 17, 1902 (32 Stat. 388). Of these lands, those hereinafter described in paragraph 7 of these regulations may be leased for residential purposes at the rates herein established and on the terms and conditions herein provided.

2. Leases shall be for periods of not to exceed fifty-three (53) years. Leases shall be executed in behalf of the United States by the City Manager of Boulder City; and they shall be in accordance with the terms and conditions and in the form approved by the Under Secretary of the Interior on April 10, 1940, as supplemented by his approval on August 10, 1940, and subject to the terms of these regulations, unless otherwise provided by the Secretary of the Interior.

3. No application for a residential lease hereunder shall be approved until the applicant therefor has satisfied the City Manager that (a) he is a citizen of the United States (b) he is a person of good moral character (c) he does not intend to use the area for which the lease is requested for speculative purposes (d) he is financially responsible so as to warrant the belief that, if granted a lease, he will be able to meet all the conditions and obligations of such a lease.

4. If requested by the City Manager, each applicant will furnish a letter, or letters, signed by the applicant, addressed to and authorizing banking and other institutions or persons to supply to the City Manager any information he may require regarding paragraph 3 above. Refusal of an applicant to furnish such authority, or his failure so to do within a period considered reasonable by the City Manager, shall be sufficient reason for rejecting his application.

5. Any existing residential lease which by its terms is to expire on or before June 30, 1941, may in the discretion of the City Manager be renewed or extended for a period of ten years from the date of expiration of, and at the rates established in, such lease; *Provided*, That no existing residential lease shall be renewed or extended if the lessee has failed, or refused, to make such reasonable improvements, alterations, or repairs in and on the building or buildings on the leased premises as have been requested in writing by the City Manager.

6. Rental rates hereinafter established shall not be increased during the life of any lease executed following the date of promulgation and in pursuance of these regulations. The Secretary of the Interior, or his duly authorized representative, however, at the end of any five-year period from the date of promulgation of these regulations, may fix a lower rental rate for any of the areas affected hereby.

7. The following lands described by reference to the map entitled "Boulder City, Nevada, Blocks, Lots and Dimensions" dated May 1, 1932, #24499, as supplemented, on file in the office of the City Manager, are hereby designated as being available for lease hereunder and rental rates, and minimum construction value limitations therefor are hereby established:

(a) Block 21 and Block 22 contain lots occupied by business structures and some lots suitable for residential sites, The City Manager shall have the latter replatted into lots approximately 50 x 100 feet to facilitate the accurate designation of each as a residential site. All lots in Block 21 and Block 22 designated by the City Manager as residential sites shall have a monthly rental rate of $6.00. Each house constructed on residential sites in Block 21 and Block 22 shall have a minimum construction value of $4,000.

(b) Block 23, Lot 14, shall have a monthly rental rate of $5.50 and Block 23, Lot 15, shall have a monthly rental rate of $6.00. Houses erected on either of these two lots shall have a minimum construction value of $3,000.

(c) Block 24, Lots 12–18, inclusive, and Block 25, Lots 2–9, inclusive, shall have a monthly rental rate of $5.00; Block 25, Lots 14, 15 and 18, shall have a monthly rental rate of $4.50; Block 24, Lot 11 and Block 25, Lot 10 shall have a monthly rental rate of $5.50. Houses erected on lots covered by this subsection shall have a minimum construction value of $3,000.

(d) In each of Blocks 33, 34, and 35, for Lots 2–33, inclusive, and for Block 36A, Lots 5–26, inclusive, the monthly rental rate shall be $4.00. Each house erected on such lots shall have a minimum construction value of $3,000.

In each of Blocks 33, 34, and 35, Lots 1 and 34 shall have a monthly rental rate of $5.00. Houses erected thereon shall have a minimum construction value of $5,000.

Block 36A, Lot 1, shall have a monthly rental rate of $5.00. Any residence erected thereon shall have a minimum construction value of $6,000. Block 36A, Lots 2, 3, 4, 27, 28, 29, and 30, shall be replatted to facilitate the accurate designation of each as a residential site. The Boulder City Real Estate Board, subsequent to such replatting, shall reappraise said lots and the City Manager, after the recommendations of the said

Board are approved by the Secretary of the Interior, shall promulgate rental rates and minimum construction values for said lots. In each of Blocks 33, 34, and 35, Lots 35 and 36 shall have a monthly rental of $6.00. Houses erected thereon shall have a minimum construction value of $5,000.

(e) Block 37, Lots 1 and 3, shall have a monthly rental rate of $5.00. Each house erected thereon shall have a minimum construction value of $3,000.

(f) In Blocks 41, 42, 43, 44A, 118–124 (inclusive), and 127–131 (inclusive) all lots now platted as having a width of less than 50 feet and a depth of less than 100 feet shall be replatted to 50 x 100 feet, and, as replatted, shall have a monthly rental rate of $2.50. Each house erected on such lots shall have a minimum construction value of $3,000.

(g) All hill residential sites commanding a view of Lake Mead (Block 2, Lots 15–44, inclusive, and Block 4, Lots 12, 15, and 16) shall have monthly rental rates from $15.00 to $20.00, the rental rate for each such site to be fixed within this range by the City Manager. Each house erected on a site with a monthly rental rate of $15.00 shall have a minimum construction value of $6,000. Each house erected on a site with a monthly rental rate of more than $15.00 shall have a minimum construction value of $10,000.

8. In the event of any dispute as to the construction value of a house the decision of the City Manager shall be final.

9. Lots leased hereunder for "residential sites" shall be available only as sites for a one-family house, or a house of the duplex type for two families only.

10. These regulations were approved by the Under Secretary of the Interior pursuant to the Interior Department Appropriation Act, 1941, of June 18, 1940 on the 11th day of October 1940.

LEWIS ELY,
City Manager.

Approved:

OCT. 11, 1940.

A. J. WIRTZ,
Under Secretary.

[F. R. Doc. 40–4411; Filed, October 18, 1940; 10:13 a. m.]

DEPARTMENT OF AGRICULTURE.

Rural Electrification Administration.

[Administrative Order No. 528]

ALLOCATION OF FUNDS FOR LOANS

OCTOBER 5, 1940.

By virtue of the authority vested in me by the provisions of Section 4 of the Rural Electrification Act of 1936, as amended, I hereby allocate, from the sums authorized by said Act, funds for loans for the projects and in the amounts as set forth in the following schedule:

Project designation:	*Amount*
Ohio 1055E1 Coshocton	$80,000
Oregon 1021B1 Coos	107,000
Texas 1070C1 Hamilton	270,000
Washington 1025C2 Cowlitz District Public	10,000
Wyoming 1009G2 Uinta	30,000
Wyoming 1014B1 Laramie	164,000

[SEAL] HARRY SLATTERY,
Administrator.

[F. R. Doc. 40–4404; Filed, October 17, 1940; 3:24 p. m.]

[Administrative Order No. 529]

ALLOCATION OF FUNDS FOR LOANS

OCTOBER 7, 1940.

By virtue of the authority vested in me by the provisions of Section 4 of the Rural Electrification Act of 1936, as amended, I hereby allocate, from the sums authorized by said Act, funds for loans for the projects and in the amounts as set forth in the following schedule:

Project designation:	*Amount*
Minnesota 1073C1 Pipestone	$180,000
Minnesota 1081B1 Aitkin	87,000
Minnesota 1084A1 Traverse	192,000
Pennsylvania 1025A1 Adams	308,000

[SEAL] HARRY SLATTERY,
Administrator.

[F. R. Doc. 40–4405; Filed, October 17, 1940; 3:24 p. m.]

COUNCIL OF NATIONAL DEFENSE.

EMERGENCY PLANT FACILITIES CONTRACT

For the information of all prospective bidders on national defense activities and for the information and guidance of others concerned, the following form of Emergency Plant Facilities Contract has been approved by the Advisory Commission to the Council of National Defense.

EMERGENCY PLANT FACILITIES CONTRACT

THIS CONTRACT entered into this ____ day of _____, 1940, by the UNITED STATES OF AMERICA, hereinafter called the Government, represented by the Contracting Officer executing this contract, and [1] _____, a corporation organized and existing under the laws of the State of _____ [1] a partnership consisting of _____ [1] an individual trading as _____ of the City of _____ in the State of _____ hereinafter called the Contractor, WITNESSETH that:

WHEREAS, the Government and the Contractor are entering into Contract No. _____, hereinafter called the Contract for Supplies, for the sale by the Contractor to the Government of certain supplies consisting of _____, and

WHEREAS, in order for the Contractor to be able to manufacture and deliver said supplies in accordance with the terms of the Contract for Supplies and within the time therein specified it is necessary for the Contractor to acquire or construct certain additional facilities, which include items making up a Separate Complete Plant (as hereafter indicated) and items designated collectively as one or more Complete Additions to an Existing Plant (as hereafter indicated), all of such items being herein collectively referred to as Emergency Plant Facilities; and

WHEREAS, the Government and the Contractor propose in the negotiation of the price charged to the Government for the manufacture and delivery of said supplies to eliminate so far as is practicable, charges for amortization and depreciation of Emergency Plant Facilities; and

WHEREAS, the Contractor is willing to undertake the acquisition or construction of the Emergency Plant Facilities hereinafter described in consideration of the execution by the Government of the Contract for Supplies and of the further agreements by the Government contained in this contract; and

WHEREAS, the Government, in view of the present emergency and the necessity of making possible the manufacture and delivery by the Contractor of the said supplies in accordance with the terms of the Contract for Supplies and within the time therein specified, in order to expedite production and in accordance with provisions of law enacted to provide for national defense in connection with said emergency, is willing in consideration of the execution by the Contractor of the said Contract for Supplies and of the further agreement by the Contractor herein contained, to provide the Contractor with funds in reimbursement of expenditures to be made for the acquisition or construction by the Contractor of Emergency Plant Facilities to the extent herein set forth and on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements herein contained to be performed by the parties hereto respectively it is agreed as follows:

ARTICLE I—EMERGENCY PLANT FACILITIES TO BE ACQUIRED OR CONSTRUCTED

1. The Contractor shall, with due expedition by contract with others or otherwise, acquire or construct the Emergency Plant Facilities generally described below and set forth in further detail in Appendix A hereto annexed, furnishing or causing to be furnished the labor, materials, tools, machinery, equipment, facilities, supplies and services, and doing or causing to be done all other things necessary for the acquisition or construction thereof. The Emergency Plant Facilities are designated as constituting Separate Complete Plant and one or more complete Additions to an Existing Plant or Plants. All of said Emergency Plant Facilities shall be in general accordance with the drawings, specifications and instructions, if any, set forth in Appendix A.[2] (Appendix A, in so far as practicable should contain a full description of each principal item or group of items of Emergency Plant Facilities; should allocate actual or estimated cost to each item or group of items; should designate which of the Emergency Plant Facilities constitute a Separate Complete Plant and which constitute one or more complete Additions to Existing Plant or Plants; should indicate if, and the extent to which, any item or group of items of the facilities replace other facilities of the Contractor and are necessary to enable it to conduct its normal operations, the price at which the Government shall be entitled to purchase the Contractor's land upon which any Complete Separate Plant is located unless the land on which the facilities

[1] Delete all lines which do not apply.

[2] When Government supervision of construction is contemplated, an appropriate clause may be inserted which will provide for the issuance by the Contracting Officer of periodical certificates stating that the Contractor has satisfactorily complied with the provisions of Section 1 of this Article during the period covered by such certificate.

are to be located is to be acquired by the Contractor and to be included as a part of the Emergency Plant Facilities, and should specify the rate or rates of depreciation, obsolescence and loss of value to be applied under section 2 of Article III hereof.)

It is estimated that the total cost of the acquisition or construction of the Emergency Plant Facilities will be approximately _____ Dollars ($____), and that such Facilities will be ready for utilization by the Contractor within _____ months from the date of this contract. It is expressly understood, however, that the Contractor does not guarantee the correctness of either of these estimates but will use its best efforts to acquire and construct said Emergency Plant Facilities in accordance with the estimates herein.

2. The Contractor may at any time make changes in or additions to the drawings and specifications, provided, however, if any such change will cause delay or a material alteration in the character of the work to be done under this contract, or will result in an estimated increase in the cost of the Emergency Plant Facilities of more than _____ Dollars ($____), the written consent of the Contracting Officer to such change shall be first obtained.

3. The title to all the Emergency Plant Facilities shall be in the Contractor. The Contractor shall, however, allow no mortgage or other lien to be an encumbrance upon the Emergency Plant Facilities (including the lien of any mortgage now existing upon property of the Contractor and any lien existing upon the Facilities prior to their acquisition), and shall make no conveyance or transfer of such Facilities or of any item thereof, unless the written consent thereto of the Head of the Department concerned is first obtained; provided that in the event of the assignment of claims arising out of this contract in accordance with the provisions of Article VII hereof, the Government will not, because a mortgage or other lien has become an encumbrance upon the Emergency Plant Facilities in violation of the provisions of this section, refuse payment of sums due as Government Reimbursement for Plant Costs in excess of the indebtedness secured by such mortgage or other lien. The restriction of this section prohibiting liens shall not apply to liens of contractors, laborers, supply men, tax liens, and other similar liens or charges created or incurred in the ordinary course of the Contractor's business, but all such liens shall be promptly removed unless contested in good faith. The Contractor shall, in respect of each of the Emergency Plant Facilities carry, until the same shall be transferred or tendered for transfer to the Government pursuant to any provision of Article III hereof, such fire insurance and other forms of insurance customarily carried in connection with similar facilities located in the same area, and of such kinds and in such amount not exceeding as to any risk the cost of such facility to the Contractor, as the Contracting Officer shall specify by notice in writing.

4. The Contractor shall, not later than the 15th day of each full calendar month after the date hereof, furnish the Contracting Officer a monthly statement, certified as correct by the Contractor, and within 30 [3] days after the close of each calendar year an annual statement certified as correct by an independent public accountant approved by the Contracting Officer, showing in detail the amount, if any, expended during the preceding calendar month or year, respectively, in connection with the acquisition or construction of the Emergency Plant Facilities which amount shall not include the cost of obtaining and furnishing such annual statement or any profit to the Contractor but may include an amount to cover the costs of the services performed by the Contractor's organization and other carrying charges during construction to the extent set forth in Appendix A and interest on funds expended as provided in Section 5 of this Article; and shall promptly after its completion of the acquisition and construction thereof, or as promptly as practicable after the giving or receiving by it of the Termination Notice provided in Section 1 of Article III prior to such completion, file with the Contracting Officer a statement in detail, similarly certified by the independent public accountant theretofore approved, and verified by the Contractor, setting forth the total amounts expended in connection with each item of such acquisition or construction, including amounts, if any, expended by the Contractor in connection with the termination of this contract in accordance with Section 4 of Article II through the cancellation of contracts or commitments, or otherwise (which statement is hereinafter called the Final Cost Certificate).

5. Except as provided in Section 4 of this Article and specifically set forth in Appendix A, no salaries of the Contractor's executive officers, no part of the expense incurred in conducting the Contractor's main office or regularly established branch offices, and no overhead expenses of the Contractor of any kind shall be included in the cost of the work as set forth in the Final Cost Certificate. Interest on funds expended shall be included in such cost. Such interest shall be computed at the annual rate of _____ per cent [4] on funds expended from month to month less payments or advances, if any, made by the Government in connection with the acquisition or construction of the Emergency Plant Facilities. Such computation of interest shall cease with the completion of the acquisition and construction of the Emergency Plant Facilities.

6. In the event that, after the filing of the Final Cost Certificate in connection with the Emergency Plant Facilities described in Appendix A the Contracting Officer shall determine that further Emergency Plant Facilities, either in connection with a Complete Separate Plant or an Addition to an Existing Plant are required for the purpose contemplated in this contract, he may enter into a contract amending this contract and Appendix A and the additional cost of such further Emergency Plant Facilities shall be determined by the filing of an amendment to the Final Cost Certificate in the same manner as hereinbefore provided in respect of the Final Cost Certificate.

7. The Contractor shall, to the extent of its ability, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions and bonifications available to the Contractor, and when unable to take advantage of such benefits it shall promptly notify the Contracting Officer in writing to that effect and the reason therefor. In determining the actual net cost of articles and materials of every kind required for the purpose of this contract, there shall be deducted from the gross cost thereof all such cash and trade discounts, rebates, allowances, credits, salvage, commissions and bonifications which have accrued to the benefit of the Contractor or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor shall not be deducted from gross costs.

ARTICLE II—PAYMENTS TO CONTRACTOR BY GOVERNMENT

1. The amount to be paid by the Government to the Contractor under this contract in respect of the Emergency Plant Facilities set forth in Appendix A, as from time to time amended, shall be the total amount set forth in the Final Cost Certificate. In the event that changes or additions shall be made in respect of the Emergency Plant Facilities with the written consent of the Contracting Officer in accordance with the provisions of Section 2 of Article I or in the event that this contract and Appendix A shall be amended as provided in Section 6 of Article I or an Additional Final Cost Certificate shall be filed pursuant to Section 1 of Article IV, the amount to be paid by the Government shall be the total of the amounts set forth in the Final Cost Certificate and any and all amendments thereto and any Additional Final Cost Certificate. In no event shall the total amount to be paid by the Government pursuant to this Section exceed $_____, or such larger sum as the Head of the Department concerned may from time to time approve. The amount to be paid by the Government is herein sometimes referred to as the Government Reimbursement for Plant Costs.

Subject to the obligation of the Government to anticipate any unpaid balance of the Government Reimbursement for Plant Costs remaining unpaid at the time of the termination of this contract as provided in this Article and in Article III hereof, the contractor shall be entitled to receive from the Government the amount of the Government Reimbursement for Plant Costs as established by the Final Cost Certificate, over a period of sixty (60) consecutive calendar months beginning with the first calendar month following the completion of the acquisition, construction and installation of the Emergency Plant Facilities in the following manner and pursuant to the following terms:

There shall become due by the Government to the contractor as Government Reimbursement for Plant Costs, on the last day of each of sixty (60) consecutive calendar months beginning with such first calendar month, 1/60th of the Government Reimbursement for Plant Costs so determined and the Government shall pay such amounts to the Contractor when and as the same become due; provided that if the Final Cost Certificate is not filed with the Government until after the calendar month in which the acquisition, construction and installation of the Emergency Plant Facilities are completed, then the Government shall pay to the contractor on the last day of the calendar month succeeding the month in which the Final Cost Certificate is delivered to the Government the amount then payable in respect of the calendar months then elapsed beginning with the calendar month following the completion of the acquisition, construction and installation of the Emergency Plant Facilities; and thereafter the Government shall pay to the contractor on the last day of each month 1/60th of the Government's Reimbursement for Plant Costs, as established by the Final Cost Certificate until the entire amount thereof shall have been paid. That part of the Government Reimbursement for Plant Costs as established by any amendment to the Final Cost Certificate or the Additional Final Cost Certificate, if any, shall become due and payable by the Government at such time and upon such terms as the contracting officer and the contractor shall agree at the time that the changes or additions to the Emergency Plant Facilities shall be consented to as hereinabove in this Section provided.

2. In the event that, on the date 90 days preceding the close of each of the fiscal years which shall be wholly or in part included in the period between the date of this contract and the date of full payment by the Government of the Government Reimbursement for Plant Costs hereunder, there shall not have been theretofore appropriated by the Congress and validly obligated by the Government to the performance of this contract funds, the appropriation and obligation of which will not lapse and which will not revert to the Treasury or be carried to the surplus fund prior to the close of the next succeeding fiscal year, in an amount sufficient to provide for the payment when due of the balance of the Government Re-

[3] The Contracting Officer may find it advisable in some instances to provide in the Contract a longer period of time for the preparation of these statements.

[4] This percentage should equal as nearly as possible the interest costs incurred by the Contractor in raising funds to carry out this contract and to the extent that the Contractor uses his own capital the fair interest return on such capital, but in no case should this percentage exceed _____ per cent.

imbursement for Plant Costs then remaining unpaid, this contract shall terminate and the amount of such balance shall on said date become due and shall, promptly after said date and before the close of the fiscal year then current, be paid by the Government to the Contractor out of the appropriations or contract authorizations originally or thereafter specified in connection with this contract.

3. If any claim arising out of this contract is assigned pursuant to the provisions of Article VII hereof, payments to be made by the Government to such assignee on account of the Government Reimbursement for Plant Costs under this contract shall not be subject to reduction or set-off for any indebtedness of the Contractor to the United States arising independently of this Contract.

4. In the event of the termination of this contract pursuant to Section 1 of Article III hereof, prior to the completion of the acquisition and construction of the Emergency Plant Facilities, the Contractor shall, as promptly as possible, deliver to the Head of the Department a complete schedule of all contracts and commitments entered into by the Contractor for the acquisition and construction of the Emergency Plant Facilities. The Government shall promptly instruct the Contractor in writing as to the extent, if any, to which it desires to assume such contracts and commitments and upon receipt of such instructions the Contractor shall promptly assign all such contracts and commitments which the Government desires to assume and which may be so assignable to the Government and the Government shall, and does hereby, indemnify and save harmless the Contractor from any and all liability arising out of or in respect thereof. The Contractor shall thereupon cease all work on the acquisition and construction of the Emergency Plant Facilities and shall, where possible, terminate without cost to it all contracts and commitments not so assigned and where the Contractor is unable to terminate any such contract or commitment without cost, it shall to the extent possible follow the instructions of the Head of the Department with reference thereto. All costs incurred and all payments made by the Contractor prior to and in connection with such termination of this contract and with the termination of any contracts or commitments entered into by the Contractor for the purposes of this contract and with the performance in whole or in part of any such contracts or commitments which shall not be terminated or until the same are terminated shall be a part of the Government Reimbursement for Plant Costs and included in the Final Cost Certificate provided to be filed under Section 4 of Article I hereof in the event of termination prior to completion of the acquisition and construction. In the event of such termination of this contract, payment to the Contractor of the Government Reimbursement for Plant Costs shall be made promptly and in any event not later than 60 days following the date of filing of the Final Cost Certificate.

ARTICLE III—DISPOSITION OF EMERGENCY PLANT FACILITIES ON TERMINATION OR COMPLETION OF CONTRACT

1. *Notice of termination.* The Contracting Officer may at any time give written notice (hereinafter called the Termination Notice) to the Contractor terminating this contract; and upon receipt of the Termination Notice the Contractor shall, in the event that the acquisition and construction of the Emergency Plant Facilities shall not have been completed, proceed with the steps to be taken by it under Section 4 or Article II. If, during any 90-day period after the completion or the acquisition and construction of the Emergency Plant Facilities the same are not used to a substantial extent by the Contractor for furnishing the Government with supplies, or if, prior to such completion, the Government shall terminate in substantial part the existing contract for supplies between the Contractor and the Government, or if the Government shall fail, the contractor not being in default hereunder, to make to the contractor payment of any installment of the Government reimbursement for plant costs within ninety days after the same shall have become due, the Contractor may give a similar termination notice to the Contracting Officer after the expiration of such 90-day period or after such termination of contracts for supplies, as the case may be. If the Contracting Officer shall disagree with the Contractor as to whether or not the Emergency Plant Facilities have not been so used to a substantial extent for the 90-day period or whether contracts for supplies have been terminated in substantial part, he shall so notify the Contractor, in writing or by telegraph, within five days from the receipt of the Termination Notice; and the Contractor may forthwith, by written or telegraphic notice, require the question to be submitted for determination by arbitrators, one appointed by the Contracting Officer and one by the Contractor within five days of the Contractor's arbitration notice, and an additional arbitrator appointed by the Senior Judge of the Circuit Court of Appeals of the circuit in which the Emergency Plant Facilities in question are located. If the additional arbitrator shall not be so appointed within five days after application by either party therefor, he shall be selected by the arbitrators appointed by the parties or, if one of the parties shall have failed to appoint its arbitrator within the time hereinbefore provided, by the sole arbitrator so appointed. The question shall be so determined by the three, or if either party shall have failed to appoint its arbitrator, the two arbitrators so appointed, the decision of any two arbitrators to be final and binding upon the parties for all purposes, unless no two arbitrators agree, in which event the decision of the additional arbitrator shall be final and binding. The Cost of arbitration, except the cost of the arbitrator appointed by the Contracting Officer, shall be paid by the Contractor and shall not be included in the Government Reimbursement for Plant Costs.

2. *Rights of the contractor.*

(a) The Contractor shall have the right, exercisable by a written notice (hereinafter referred to as the Retention Notice), given within 90 days after giving of the Termination Notice, by either party, or within ninety (90) days after the termination of this contract under Section 2 of Article II hereof, to retain under this paragraph for its own use outright, free of any interest of the Government, and/or to negotiate under paragraph (b) hereof for such retention of any Separate Complete Plant and/or of any item or group of items constituting a Complete Addition to an Existing Plant or of the entire Emergency Plant Facilities. With respect to any such Separate Complete Plant and/or to any such item or group of items constituting a complete Addition to an Existing Plant, or with respect to the entire Emergency Plant Facilities which are designated for retention by the Contractor, the Contractor shall, subject to the provisions of paragraph (d) of this Section, if a less amount shall not have been agreed upon and approved as representing the fair value under paragraph (b) of this Section, pay to the Government an amount equal to the cost thereof as established by the Final Cost Certificate, and the Final Cost Certificate as amended, and by any Additional Final Cost Certificates, reduced to the extent appropriate for the application or payment of excess insurance proceeds, if any, under Section 1 of Article IV, (or, if the acquisition and construction of the Emergency Plant Facilities shall not have been completed, as established as of the date of the Retention Notice by the approved public accountant), less an amount representing depreciation, obsolescence and loss of value due to use for national defense purposes for each year or portion of a year elapsed from the date of acquisition or completion of construction thereof to the date of the Termination Notice at the rate or rates specified as applicable in Appendix A. Upon payment or tender to the Contracting Officer, at _____ of the amount so payable in respect of any such item designated for retention by the Contractor, or upon settlement of the balance, if any, due to or from the Government under paragraph (d) of this Section, any and all interest therein and right in respect thereof of the Government shall forthwith terminate, and the Contracting Officer shall execute and deliver to the Contractor a valid release of any and all such interest and right.

(b) In respect of any Complete Separate Plant and/or of any item or group of items constituting a Complete Addition to an Existing Plant, or of the entire Emergency Plant Facilities which the Contractor shall have designated in the Retention Notice for negotiation under this paragraph, the Contractor shall have the right to negotiate with the Contracting Officer with reference to the retention of the same free of any interest of the Government upon the payment to the Government of an amount less than the amount determined under paragraph (a) above representing the fair value thereof as of the date of the Retention Notice; and upon the establishment between the Contractor and the Contracting Officer of such fair value and approval of the same by the Head of the Department, the Contractor shall, upon payment or tender of the amount or upon settlement of the balance due to or from the Government under paragraph (d) of this Section have the right to retain for its own use outright free of any interest of the Government any Separate Complete Plant and/or any item or group of items constituting a Complete Addition to an Existing Plant or the entire Emergency Plant Facilities. In the event that, within a period of 90 days from the date of Retention Notice the Contractor and Contracting Officer are unable to agree upon the fair value of any such Separate Complete Plant or of any such item or group of items constituting a Complete Addition to an Existing Plant, or, of the entire Emergency Plant Facilities, or in the event that the fair value thereof so agreed upon shall not be approved by the Head of the Department, the Contractor shall, upon the expiration of said period or earlier at the election of the Contractor, either pay to the Government in respect of the retention of any such group of facilities, the applicable amount under Paragraph (a) of this section, or

(1) as to any such Separate Complete Plant, transfer the same promptly to the Government free and clear of all mortgages or liens not theretofore consented to by the Head of the Department concerned; or

(2) as to any such facilities constituting a Complete Addition to an Existing Plant transfer the same promptly to the Government free and clear of all mortgages or liens not theretofore consented to by the Head of the Department concerned, and, at the Contractor's election, require the removal of all or any part thereof by the Government from the premises altogether, which removal shall forthwith be effected by the Government in neat and workmanlike fashion and the Contractor's premises and facilities, including Emergency Plant Facilities retained by the Contractor, as affected by such removal shall be by the Government restored so as to leave the same in as good condition as immediately prior to the acquisition or construction of such facilities, (in as good condition as before such removal without defects or obstructions caused by such removal).

(c) In respect of any of the Emergency Plant Facilities not designated in the Retention Notice for either retention by the Contractor or for negotiation, the Contractor shall promptly after the giving of the Retention Notice transfer the same to the Government free and clear of all mortgages and liens not theretofore consented to by the

Head of the Department concerned. If no Retention Notice be given within the time allowed for such notice under Section 2 of this Article, the Contractor shall promptly upon the termination of the time allowed for such notice transfer the entire Emergency Plant Facilities to the Government free and clear of all mortgages and liens not theretofore consented to by the Head of the Department concerned.

(d) Any sums to be paid by the Contractor to the Government under paragraph (a) and/or paragraph (b) of this Section shall be reduced by the amount of any sums to be paid by the Government to the Contractor on account of Government Reimbursement for Plant Costs under Article II hereof and not theretofore paid by the Government, and, if the sum so to be paid by the Government to the Contractor and then remaining unpaid shall exceed the amount to be paid by the Contractor under both of said paragraphs, the Government shall promptly pay to the Contractor the amount of such excess; provided, however, that in the event that the Contractor shall retain under paragraphs (a) or (b) any facility the acquisition or construction of which is not complete at the date of the Retention Notice and in respect of which therefore no payment has been made by the Government, the Contractor shall retain the same without payment and the amount of the Government Reimbursement for Plant Costs shall be reduced by the cost thereof, determined as hereinbefore provided in Section 1 of Article II hereof. In the event that the Contractor shall elect to retain none of the Emergency Plant Facilities under either paragraph (a) or paragraph (b) above, upon transfer thereof to the Government, there shall become due, and the Government shall promptly pay to the Contractor, the entire balance of the sum to be paid by the Government to the Contractor on account of the Government Reimbursement for Plant Costs not theretofore paid.

(e) The Contractor shall have the right, with respect to any facilities not retained by the Contractor under paragraphs (a) or (b) of this Section, to negotiate with the Contracting Officer with reference to the leasing of all or any part thereof for such period and upon such terms which may include provision for renewal and an option to purchase the same as the Contractor and the Contracting Officer may agree upon, subject to the approval of the Head of the Department.

3. *Rights of the government.*

(a) In respect of any item or group of items of the Emergency Plant Facilities constituting an Addition to an Existing Plant which are transferred to the Government under any provision of Section 2 of this Article and the removal of which is not required by the Contractor, the Contractor shall have the right to use the same, without cost, if and to the extent that such facilities have replaced other facilities of the Contractor and are necessary to enable it to conduct its normal operations. The Contractor shall at its expense, care for, maintain, and insure, to the extent approved or required by the Head of the Department, such facilities left in place by the Government which the Contractor is entitled under this Section to use without cost, so long as the Contractor so uses the same under this paragraph; and shall further care for and maintain to the extent above provided, all similar facilities the removal of which shall not have been required by the Contractor and which may be left in place by the Government as standby capacity for the account of the Government so long, subject to the provisions of paragraph (c) of this Section, as the Government shall duly and promptly pay the Contractor monthly, upon the submission of duly certified invoices therefor, any and all expense incurred and paid by the Contractor in the preceding calendar month for the maintenance, care, protection, and repair of such facilities, including any and all taxes assessed thereon or in respect thereof, and all costs of insurance carried for the protection thereof and any and all other expenses and cost of every sort incident thereto provided, however, that the Contractor may at any time on 90 days' written notice terminate the obligation to care for and maintain such facilities and require the removal of the same upon the same terms as under sub-paragraph (2) of paragraph (b) of Section 2 of this Article. Such facilities, the removal of which shall not have been required by the Contractor and which shall have been left in place by the Government, which the Contractor is not entitled to use without cost under this Section, or which shall not have been leased to the Contractor, may be removed by the Government at any time regardless of such notice from the Contractor; and facilities left in place which the Contractor is so entitled to use without cost and which are in use for or required by commitments theretofore undertaken by the Contractor, may be removed by the Government regardless of such notice from the Contractor, at any subsequent time when such removal will not impede or interfere with the Contractor's performance of such commitments. Such removal shall be accomplished in a neat and workmanlike manner and the Contractor's premises and facilities, including Emergency Plant Facilities retained by the Contractor, as affected by such removal, shall be by the Government restored so as to leave the same in as good condition as immediately prior to the acquisition or construction of such facilities (in as good condition as before such removal without defects and obstructions caused by such removal).

(b) In the event that the Government shall fail, after 90 days' notice from the Contractor of such failure, to pay any of the sums to be paid or to perform any of the things to be performed by it under this Section with respect to any item or group of items constituting an Addition to an Existing Plant or to remove the same when required thereto in accordance with any provision of this Article, the Contractor shall have the right to remove the same from the premises entirely and to receive from the Government promptly after such removal the amount of the reasonable cost of such removal and of any sums to be paid by the Government in respect thereof under this Article and not theretofore paid.

(c) The Government agrees, so far as it lawfully may, with respect to any facilities transferred to it or removed by it pursuant to this Article III that it will at no time use the same or any of them for business or commercial purposes, provided that the Government may at any time use any such facilities for national defense or for any purpose incident to the conduct or execution of any act of Congress or any order of the President of the United States, and the Government further agrees that if the Government desires to sell or lease such facilities or any part thereof, it will not do so without giving the Contractor, to the extent permitted by law, a reasonable opportunity to purchase or lease the facilities proposed to be sold or leased on the same terms and at the same price or rental at which it is proposed to sell or lease them to any other party.

(d) If any Complete Separate Plant located in whole or in part on premises which are the property of the Contractor and which have not been designated in Appendix A as a part of the Emergency Plant Facilities, are transferred to the Government under any provision of Section 2 of this Article, the Government, upon written notice given to the Contractor not later than 90 days following the transfer of such facilities to it, shall have the right to purchase from the Contractor the land on which such facilities are located at the predetermined price set forth in Appendix A.

ARTICLE IV—LOSS OR DESTRUCTION OF FACILITIES AND MAINTENANCE

1. In the event that all of the Emergency Plant Facilities or any item or group of items thereof shall, prior to the transfer by the Contractor to the Government, be destroyed or damaged by the operation of any risk required to be covered in respect of such facilities by insurance under Section 3 of Article I hereof, or of any risk in respect thereof actually covered by insurance carried by the Contractor, the Contractor shall immediately notify in writing the Contracting Officer and may on its own initiative, and the Government may by written notice given within 60 days require the Contractor to apply the proceeds of the insurance coverage in respect of such facilities to the restoration, reconditioning or replacement thereof. In the event that the proceeds of the insurance coverage shall be insufficient to provide for the restoration, reconditioning or replacement, initiated by the Contractor or required by the Government, the amount of the additional sums required therefor as certified by the Final Cost Certificate as amended or by an Additional Final Cost Certificate in form similar to that provided in Section 4 of Article I hereof, shall be added to the balance of Government Reimbursement for Plant Costs; provided that nothing contained in the foregoing sentence shall prejudice or affect the right of the Government to terminate this contract upon the terms provided in Article III by giving the Termination Notice therein provided. In the event that the proceeds of the insurance coverage shall exceed the amount required for the restoration, reconditioning or replacement, the amount of such excess or in the event that restoration, reconditioning or replacement is not initiated by either party, the amount of the proceeds of insurance, shall be retained by the Contractor and applied in reduction of the then balance of Government Reimbursement for Plant Costs, any excess of such proceeds over and above the amount of such balance to be promptly paid by the Contractor to the Government. Any excess so applied by the Contractor or paid by the Contractor to the Government shall be deemed to reduce pro tanto the cost of the facility for the purposes of paragraph (a) of Section 2 of Article III. In the event that the destruction or damage shall be caused by the operation of any risk not required to be covered and not covered by insurance carried by the Contractor, the Government shall within 60 days after receipt of notice of such destruction or damage either

(a) require the Contractor to restore, recondition or replace all facilities necessary to continuous and efficient operation of all facilities in which event the amount of the cost thereof as certified by a Final Cost Certificate shall be added to the balance of Government Reimbursement for Plant Costs, or

(b) terminate this contract subject to the terms provided in Article III by giving the termination notice therein provided.

2. The Contractor shall be responsible, prior to the transfer thereof to the Government, for the care and maintenance of such facilities; and all items of the Emergency Plant Facilities transferred by the Contractor to the Government under Article III hereof shall be in a good state of maintenance and repair except for destruction, or wear or damage normally incident to the production carried on by the Contractor and for such destruction or damage arising out of causes or risks not normally incident to such production which shall not be or have been provided for by restoration, reconditioning or replacement pursuant to paragraph (a) above, and except that the Contractor shall be under no obligation to maintain or repair items from time to time determined by the Contracting Officer to be obsolete or no longer used or useful in connection with the production by the Contractor of the supplies to be produced for the Government in or by the use of the Emergency Plant Facilities, provided that such items no longer used and useful, and also items requiring modification for what the Contractor deems to be improved productive efficiency may, at any time, in the discretion of the Contractor, be reworked, readjusted or adapted to the then requirements of the production of supplies

for the Government, or may, with the approval of the Contracting Officer, be sold, the net proceeds of sale to be credited by the Contractor upon the balance of Government Reimbursement for Plant Costs then remaining unpaid.

During the continuance of this contract at the end of each twelve-month period following the completion of the Emergency Plant Facilities the Contracting Officer shall within 90 days, if not so satisfied, notify the Contractor in writing that the care and maintenance of the Emergency Plant Facilities has failed to meet requirements of this section and the respects in which it has so failed. The Contractor shall forthwith comply with the directions of the Contracting Officer in this regard. Failure to give any such notice by the Contracting Officer shall be a conclusive admission that the care and maintenance of the Emergency Plant Facilities by the Contractor for the period involved has been proper.

ARTICLE V—RECORDS AND ACCOUNTS—INSPECTION THEREOF

1. The Contractor agrees to keep records and books of account showing the actual cost to it of all items of labor, materials, equipment, supplies, services and other expenditures of whatever nature either in connection with the acquisition or construction of the Emergency Plant Facilities under Article I the care and maintenance thereof under Article III or the restoration, reconditioning or replacement thereof under Article IV.

2. The Contracting Officer or his duly authorized representative shall at all times be afforded proper facilities for inspection of the Emergency Plant Facilities, both during and after construction, and shall at all reasonable times have access to the premises, work and materials, and to all books and records referred to in the foregoing paragraph 1 of this article.

ARTICLE VI—REPORTS TO BE FURNISHED BY THE CONTRACTOR IN FURTHERANCE OF NATIONAL DEFENSE

1. The Contractor shall, in so far as it is able, furnish to the Government, upon written request therefor, such reports, estimates and other information as the Coordinator of National Defense Purchases, or such other person as may be designated by the President, finds necessary and reasonable for the expediting of national defense. Requests for such reports, estimates and other information shall set forth the nature of the information sought and the form in which such information is to be furnished. If the Contractor is for any cause unable to furnish such information to the extent and in the manner requested, it shall promptly report to the Government in writing its inability to furnish such information, whereupon the Government, at its expense, may assist the Contractor to furnish such information to the extent and in the manner requested.

ARTICLE VII—ASSIGNMENT OF CONTRACTOR'S CLAIMS

1.[5] Claims for monies due or to become due to the Contractor from the Government arising out of this contract may be assigned to any bank, trust company or other financing institution, including any Federal lending agency; and any such assignment may cover all or any part of any claim or claims arising or to arise out of this contract and may be made to, any one or more such institutions or to any one party as agent or trustee for two or more such institutions participating in the financing of this contract.[6] Any claims so assigned may be subject to further assignment; and any bond, promissory note or other evidence of indebtedness secured by any such assignment may be rediscounted, hypothecated as collateral for a loan or credit, or sold with or without recourse. In the event of the assignment or reassignment of any claim for monies due or to become due under this contract the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the General Accounting Office of the Government, (b) the Contracting Officer or the Head of the Department or Agency, (c) the surety or sureties upon the bond or bonds, if any, in connection with such contract, and (d) with the disbursing officer of the _____
(Specify War, Navy, etc.)
Department at _____,
(Street address and Post Office)
who is hereby designated to make all payments under this contract. In no event shall copies of any plans, specifications or other similar documents marked "SECRET" and annexed or attached to this contract be furnished to any assignee of any claim arising under this contract or to any other person not otherwise entitled to receive the same.

2. Any assignment made in accordance with Section 1 of this article may provide that so long as there shall be sums due from the Government to the Contractor under this contract, the Contractor shall not, without the consent of the assignee, exercise any right given to the Contractor under the provisions of Section 2 of Article III hereof.

ARTICLE VIII—CONVENANT AGAINST CONTINGENT FEES

The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to terminate the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

ARTICLE IX—OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE X—DISPUTES

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer subject to written appeal by the contractor within 30 days to the head of the department concerned or his duly authorized representative, whose decision shall be final and conclusive upon the parties thereto. In the meantime the contractor shall diligently proceed with the work as directed.

ARTICLE XI—DEFINITIONS

(a) The term "Head of the Department" as used herein shall mean the head or any assistant head of the executive department or independent establishment involved, and the term "his duly authorized representative" shall mean any person authorized to act for him other than the contracting officer.

(b) The term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

ARTICLE XII—TAX AMORTIZATION

Inasmuch as it is the intent of Sections 23 and 124 of the Internal Revenue Code, unless payments made on account of Government Reimbursements for Plant Costs are included in gross income, not to allow (1) the tax deduction for amortization over a 60-month period of the Emergency Plant Facilities or (2) the inclusion of such payments in invested capital for purposes of the excess-profits tax, the Contractor agrees that, if such payments, to the extent they constitute reimbursements for capital expenditures made in acquisition or construction of such Emergency Plant Facilities, are not includible in gross income, then, for Federal tax purposes, (1) the basis of such Emergency Plant Facilities shall be computed without taking into account capital expenditures for which the Contractor has been or will be so reimbursed and (2) the amount of such reimbursements shall not be treated as paid-in surplus or contributions to capital for purposes of the excess-profits tax. In the event that the Contractor makes application to the Advisory Commission to the Council of National Defense and to the Department of War (the Navy) for a certificate with respect to terms contained in this contract or the necessity for any item or group of items of the Emergency Plant Facilities under Sections 23 and 124 of the Internal Revenue Code in accordance with rules governing such applications and the Contractor is thereafter refused the issuance of such certificate by either such Commission or the Department of War (the Navy), this contract shall terminate forthwith with the same effect as though a termination notice had been filed pursuant to Section 1 of Article III hereof.

ARTICLE XIII—ALTERATIONS

The following changes were made in this contract before it was signed by the parties hereto:

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA,
By _____
_____
(Official title)
_____
_____
Contractor.
_____
(Business Address)
Two witnesses:
_____
_____

SIDNEY SHERWOOD,
Assistant Secretary.

OCTOBER 18, 1940.

[F. R. Doc. 40-4419; Filed, October 18, 1940; 12:04 p. m.]

[5] This Section may only be inserted in contracts signed after the enactment of proposed statute amending 3477 and 3737 of the Revised Statutes permitting the assignment of claims against the Government.

[6] Pursuant to Section 3477 and Section 3737 of the Revised Statutes as amended, Section 1 of this Article may be varied so as to deny the assignment of any claim arising hereunder.

FEDERAL SECURITY AGENCY.

Food and Drug Administration.

[Docket No. FDC-26]

IN THE MATTER OF DEFINITIONS AND STANDARDS OF IDENTITY FOR CACAO NIBS; CHOCOLATE LIQUOR; SWEET CHOCOLATE (COATING); MILK CHOCOLATE (COATING); SKIM MILK CHOCOLATE (COATING); BUTTERMILK CHOCOLATE (COATING); MIXED MILK, SKIM MILK, BUTTERMILK, MALTED MILK CHOCOLATE (COATING); COCOA; BREAKFAST COCOA; LOW-FAT COCOA; SWEET COCOA AND FAT (OTHER THAN CACAO FAT) COATING; AND SWEET CHOCOLATE AND FAT (OTHER THAN CACAO FAT) COATING

NOTICE OF HEARING

Pursuant to the provisions of subsection (e) of Section 701 of the Federal Food, Drug, and Cosmetic Act [52 Stat. 1055; 21 U.S.C. 371 (e)] and of Reor-

ganization Plan No. IV [54 Stat. —; 5 F.R. 2421], notice is hereby given that, beginning at 10 a. m., on December 9, 1940, in Room 1039, South Building, Independence Avenue and 14th Street SW., Washington, D. C., a public hearing will be held upon the proposals hereafter set forth for the purpose of receiving evidence upon the basis of which there may be promulgated regulations fixing and establishing, under Section 401 of the Federal Food, Drug, and Cosmetic Act [52 Stat. 1046; 21 U.S.C. 341], definitions and standards of identity for cacao nibs; chocolate liquor; sweet chocolate (coating); milk chocolate (coating); skim milk chocolate (coating); buttermilk chocolate (coating); mixed milk, skim milk, buttermilk, malted milk chocolate (coating); cocoa; breakfast cocoa; low-fat cocoa; sweet cocoa and fat (other than cacao fat) coating; and sweet chocolate and fat (other than cacao fat) coating.

Michael F. Markel is hereby designated as Presiding Officer to conduct the hearing, with full power and authority to administer oaths and affirmations and to do all other things appropriate to the conduct of the hearing. The hearing will be conducted in accordance with the rules of practice provided for such hearings, as published in the FEDERAL REGISTER of June 26, 1940 [5 F.R. 2379–2381].

All interested persons are invited to attend the hearing, in person or by representative, and give evidence relevant and material to the subject matter of the proposals.

Affidavits permitted to be submitted under the rules of practice, and all communications respecting the subject matter of this notice, should be delivered to the Presiding Officer at Room 2240, South Building, Independence Avenue and 14th Street SW., Washington, D. C.

The proposed definitions and standards of identity, which are subject to adoption, rejection, amendment, or modification, in whole or in part, as the evidence of record at the hearing may require, are as follows:

§ 14.000 *Cacao nibs, cocoa nibs, cracked cocoa—identity; label statement of optional ingredients.* (a) Cacao nibs, cocoa nibs, cracked cocoa, is the food prepared by so heating, breaking, and winnowing cleaned cacao beans that the finished cacao nibs contain not more than ------ percent (to be fixed within the range of 1 percent to 1.75 percent) of cacao shell, as determined by the method prescribed in subsection (c). To darken the color and otherwise modify the properties, part or all of such cacao nibs, or of the cacao beans used in the preparation thereof, may be processed by heat with the optional alkali ingredient—

Bicarbonate, carbonate, or hydroxide of sodium or potassium, or carbonate or oxide of magnesium, or any combination of two or more of these; but the total quantity, for each 100 parts by weight of finished cacao nibs, of any such substance or combination of substances used in such processing is not greater in neutralizing value than ------ parts (to be fixed within the range of 1 part to 3 parts) by weight of anhydrous potassium carbonate, as calculated from the respective combining weights of such alkalis.

(b) When the optional alkali ingredient is used, the label shall bear the statement "Alkali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used. Wherever the name "Cacao Nibs", "Cocoa Nibs", or "Cracked Cocoa" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statement herein prescribed showing the use of the optional ingredient shall immediately and conspicuously precede or follow such name, without intervening written, printed or graphic matter.

(c) The method referred to in subsection (a) is as follows:

I. Trier for Sampling

Use a double-tube, separate-compartment grain trier to collect samples of nibs from bins, trucks, and sacks. The tubes of the trier are of No. 16 gauge (B & S) (0.0508 inch) seamless metal. The outside diameter of the outer tube is 1⅜ inches, and the outer and inner tubes fit each other closely. The width of the openings in the outer tube is ⅛ inch, and in the inner tube 1 inch. The length of such openings in both tubes is 3½ inches, except that the length of the opening of the compartment nearest the point of the trier may be 3 to 3½ inches. Each compartment coincides with and is of the same length as its opening in the inner tube. The openings of inner and outer tubes match when the trier is open for sampling. The distance between adjacent compartments is 1½ to 2 inches, and the distance between the point of trier and the compartment end nearest the point is not more than 1⅛ inches.

II. Collection of Sample

(a) *In bulk.* Collect a sample of approximately 10 pounds by probing with the trier described in I. Probe the nibs to the bottom of the pile, spacing the individual probings approximately equidistant from each other throughout the top area of the nibs. If the nibs are inaccessible, or the pile is of greater depth than the length of the trier from its point to 2 inches above the compartment end nearest the handle, take the sample from the chute through which the bin is being filled or emptied, as directed in (b).

(b) *From chutes.* Collect a sample of approximately 10 pounds by catching momentarily and at regular intervals in a suitable receptacle a cross section of the stream of nibs from the chute. Continue sampling throughout the time the lot of nibs being sampled is passing through the chute.

(c) *From sacks.* Collect a sample of approximately 10 pounds by probing with the trier described in I. The length of the trier from its point to 2 inches above the compartment end nearest the handle equals or exceeds the depth to which the sacks are filled. Probe with the trier through the entire depth of the nibs in the sack. Probe a number of sacks, selected at random, equal to at least the square root of the total number of sacks in the lot. If the lot is of 6 or less sacks, probe all of them; if of 7 to 35 sacks, probe at least 6.

III. Reduction of Sample

Using a sample divider of the type described in U. S. Department of Agriculture Bulletins No. 287, September 14, 1915, and No. 857, June 25, 1920, reduce the size of the sample collected under II to approximately ½ pound. Weigh the reduced sample to the nearest 0.05 gram. Proceed as directed under "(a) Hand Division" or "(b) Machine Division" of IV.

IV. Division of Sample

(a) *Hand division.* Use No. 10 and No. 20 sieves, having standard 8-inch full height or half height frames, complying with the specifications for wire cloth and sieve frames in "Standard Specifications for Sieves" published March 1, 1940, by U. S. Department of Commerce, National Bureau of Standards. Fit a No. 10 sieve over a No. 20 sieve. Attach bottom pan to the No. 20 sieve. Pour 75 to 100 grams of the reduced sample into the No. 10 sieve. Attach cover and hold the assembly in a slightly inclined position with one hand. Shake the sieves by striking the sides against the other hand with an upward stroke, at the rate of about 150 times per minute. Turn the sieves about one-fifth of a revolution, each time in the same direction, after each 20 strokes. Continue shaking for about 100 strokes. Remove from the assembly and keep segregated the material which fails to pass through the No. 10 sieve, that which fails to pass through the No. 20 sieve, and that which passes through the No. 20 sieve. Continue screening successive portions of 75 to 100 grams of the reduced samples by the same procedure until all such material has been segregated. Designate the combined material which fails to pass through the No. 10 sieve as L, that which fails to pass through the No. 20 sieve as S, and that which passes through the No. 20 sieve as F. Treat L, S, and F, respectively, as directed under V (a), (b), and (c).

(b) *Machine division.* Use a sample-size grain-cleaning mill of the type described on page 16 of U. S. Department of Agriculture Farmers' Bulletin No. 1747, issued September 1935. Fit into the lower slot of the mill a single round-hole plate screen having circular openings not less than 0.083 inch and not more than 0.093 inch in diameter, conforming to the thickness of plate specified for screening areas under 100 square inches, to the

width of metal between holes for 1/16-inch opening, and to the arrangement of openings, specified on pages 6 and 7 of "Standard Specifications for Sieves" referred to in "(a) Hand Division." The machine is provided with settling traps to catch all material blown out by the fan. The inclined slide under the screen is provided with a removable slat in such position that when it is removed the material passing through the screen is discharged from the mill without going to the fanning chamber. Remove this slat, start the mill, and pour slowly the reduced sample obtained in III over the upper part of the screen. Designate as L^1 the material which does not pass through the screen and is not removed by fanning. Collect the material which passes through the screen and screen it again using the apparatus and procedure prescribed under "(a) Hand Division," except that a No. 20 sieve is the only sieve used in the assembly. Collect the portion passing through the sieve and designate it as *F*. Reserve *F* for treatment as directed in *V* (c).

Replace the slat in the mill and, without removing L^1 or the fannings, start the mill and pour the portion which remained on the No. 20 sieve slowly onto the upper part of the screen. Allow the material thus cleaned to combine with L^1, designate the combination as L^1+S^1 and proceed as directed in *V* (a). Remove the combined fannings from the settling traps of the mill and screen them, using the apparatus and procedure prescribed under "(a) Hand Division," except that a No. 10 sieve is the only sieve used in the assembly. Collect the portion remaining on the No. 10 sieve and designate it as *LS*. Collect the portion passing through the sieve and designate it as *SS*. Treat *LS* as directed in *V* (a), and *SS* as directed in *V* (b).

V. Determination

(a) Place *L* from the hand division on L^1+S^1 from the machine division on a large sheet of sized paper. Scatter 2 to 3 grams of *L* or 4 to 5 grams of L^1+S^1 over an area of the paper about 3 or 4 inches in diameter. Examine the scattered portion and remove the pieces of shell with a spatula or tweezers. Examine the entire portion of *L* or L^1+S^1 progressively in this manner. Separate the shell from *LS* (from the machine division) in the same manner. Reserve the separated shell for later combination with shell from other fractions.

(b) Separate the shell from *S* or fraction thereof and from *SS* from the machine division as follows:

If the quantity of shell in *S* (from the hand division) appears to be small, use the entire portion. If *S* weighs more than 4.5 grams and appears to contain a large quantity of shell, weigh it accurately to the nearest 10 milligrams; mix the entire portion by pouring it gradually several times from one glazed paper to another, each time forming conical piles; flatten and quarter the last pile formed, and combine alternate quarters; if necessary mix and again reduce by quartering until a weight of from 3 grams to 4.5 grams is obtained; weigh the fraction thus obtained accurately to the nearest 10 milligrams.

Place a blotting paper of approximately 19 by 24 inches on a firm supporting plane inclined at an angle of 21 to 24 degrees from horizontal. Pour all of the material gradually and in successive portions from an elevation of about 2 or 3 inches along the upper end of the blotter. Shake the blotter slowly to cause the nib material to roll down, and at intervals remove the material collected at the bottom. Toward the end of the procedure shake the blotter more rapidly to detach most of the nib material. After removing the shell adhering to the blotter, repeat the procedure on the last portions of material collected at the bottom of the blotter. Using a reading glass, complete the separation of shell and nibs with a spatula or tweezers by examining portions until all the material is examined. Except in separations from a fraction of *S*, reserve the separated shell for combination with that obtained from other separations. In the case of separations from a fraction of *S*, weight the separated shell to the nearest milligram and calculate the total weight of shell in *S*.

(c) Place *F* obtained from either the hand division or machine division in a 400 c. c. beaker about half full of a solution (specific gravity 1.335 to 1.345) composed of 2⅛ volumes of carbon tetrachloride and 1 volume of 95% alcohol. Stir the mixture about 1 minute, but slowly at the last, and allow to settle from 3 to 4 minutes. Skim off the floating nibs with a strainer made with about No. 40 wire cloth. Decant the liquid from the beaker without disturbing the residue until 2 to 4 c. c. remains. Wipe the inside of the beaker above the liquid with filter paper moistened in the solution described above so as to remove nib material. Add to the residue in the beaker about 25 c. c. of petroleum benzin (B. P. 30° to 65° C.), swirl the liquid a few times, allow the residue of shell to settle, and decant the liquid. Allow the remaining liquid to evaporate and dry the shell on a steam bath. Reserve the shell for combination with other fractions of shell.

(d) Combine all the shell obtained from *L*, *S*, and *F* (from the hand division), or from L^1+S^1, *LS*, *SS*, and *F* (from the machine division), and weigh the combined shell from the reduced sample. If a fraction of *S* was used, combine *L* and *F*, weigh, and add the calculated weight of shell in *S* to obtain the weight of shell from the reduced sample. Report the result in terms of the percentage by weight of shell in the nibs.

§ 14.010 *Chocolate liquor, chocolate, bitter chocolate, baking chocolate, cooking chocolate, chocolate coating, bitter chocolate coating—identity; label statement of optional ingredients.* (a) Chocolate liquor, chocolate, bitter chocolate, baking chocolate, cooking chocolate, chocolate coating, bitter chocolate coating, is the solid or plastic food prepared by grinding cacao nibs, so selected or so blended or with such quantity of added cacao fat, with or without cocoa, breakfast cocoa, or low-fat cocoa, that the finished chocolate liquor contains not less than _____ percent (to be fixed within the range of 50 percent to 53 percent) and not more than _____ percent (to be fixed within the range of 58 percent to 61 percent) of cacao fat, as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fifth Edition, 1940, page 202, under "Fat Method I—Official". To darken the color and otherwise modify the properties, part or all of the ground cacao nibs or of such cocoa or of both, or of the cacao beans or cacao nibs used in the preparation of such ground cacao nibs or cocoa, may be processed by heat with the optional alkali ingredient—

(1) Bicarbonate, carbonate, or hydroxide of sodium or potassium, or carbonate or oxide of magnesium, or any combination of two or more of these; but the total quantity, for each 100 parts by weight of finished chocolate liquor, of any such substance or combination of substances used in such processing is not greater in neutralizing value than _____ parts (to be fixed within the range of 1 part to 3 parts) by weight of anhydrous potassium carbonate, as calculated from the respective combining weights of such alkalis.

Such mixture may be seasoned with one or more of the following optional ingredients, added as such or as ingredients in the cocoa, breakfast cocoa, or low-fat cocoa used:

(2) Salt.

(3) Ground spice, ground vanilla beans, butter or milk fat, any food flavoring oil or oleoresin or extract, or any combination of two or more of these; except any such article containing any artificial flavoring.

(4) Vanillin, ethyl vanillin, coumarin, other artificial food flavoring, or any combination of two or more of these; except any such article which is an imitation of butter flavor or milk flavor or chocolate flavor.

(b) (1) When optional ingredient (1) is used, the label shall bear the statement "Alkali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used.

(2) When optional ingredient (3) is used, the label shall bear the statement "Seasoning Added" or "With Added Seasoning"; but in lieu of such statements the label may bear the statement "Seasoned With _____", the blank to be filled in with the common name or names of the seasoning used.

(3) When optional ingredient (4) is used, the label shall bear the statement "Artificially Flavored"; but in lieu of such statement the label may bear the statement "Artificial _____ Flavoring Added", the blank to be filled in with the common name or names of the artificial flavoring used.

(4) When two or all of optional ingredients (1), (3), and (4) are used, the statements prescribed for such ingredients may be combined, as for example, "With Added Alkali, Ground Vanilla Beans, and Artificial Coumarin Flavoring."

(5) Wherever the name "Chocolate Liquor", "Chocolate", "Bitter Chocolate", "Baking Chocolate", "Cooking Chocolate", "Chocolate Coating", or "Bitter Chocolate Coating" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements herein prescribed showing the optional ingredients used shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter.

§ 14.020 *Sweet chocolate, sweet chocolate coating—identity; label statement of optional ingredients.* (a) Sweet chocolate, sweet chocolate coating, is the solid or plastic food composed of an intimate mixture of chocolate liquor and sugar or dextrose or both, with or without added cacao fat. If an optional alkali ingredient was used in preparing such chocolate liquor, such optional alkali ingredient is optional ingredient (1) of the sweet chocolate. Such mixture may also contain not less than _____ percent (to be fixed within the range of 5 percent to 7 percent), but less than _____ percent (to be fixed within the range of 12 percent to 16 percent), by weight of the milk constituent solids of one of the following optional dairy ingredients (2), (3), (4), (5), and (6):

(2) Concentrated milk; evaporated milk; sweetened condensed milk; dried whole milk; any combination of butter or milk fat and concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, or dried skim milk, in which the ratio of milk fat to non-fat milk solids is not less than 1 to 2.275; or any combination of two or more of these; but if butter or milk fat is used, either in this optional ingredient or in or as optional ingredient (9), the ratio of total milk fat to total non-fat milk solids in such ingredients is not more than 1 to 1.2.

(3) Concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, dried skim milk, or any combination of two or more of these.

(4) Concentrated buttermilk, dried buttermilk, or any combination of these.

(5) Malted milk.

(6) Any combination of two or more of optional dairy ingredients (2), (3), (4), and (5) in which the weights of the milk constituent solids of such ingredients are equal, or in which the weight of the milk constituent solids present in the smallest proportion is not less than one-third the weight of the milk constituent solids present in the largest proportion.

Such mixture may also contain as an optional emulsifying ingredient—

(7) Lecithin, in a total quantity not more than 0.5 percent of the weight of the finished sweet chocolate.

Such mixture may be seasoned with one or more of the following optional ingredients, added as such or as ingredients in the chocolate liquor used:

(8) Salt.

(9) Ground spice, ground vanilla beans, honey, butter or milk fat, any food flavoring oil or oleoresin or extract, or any combination of two or more of these; except any such article containing any artificial flavoring.

(10) Vanillin, ethyl vanillin, coumarin, other artificial food flavoring, or any combination of two or more of these; except any such article which is an imitation of butter flavor or milk flavor or chocolate flavor.

The quantity of chocolate liquor, calculated to a fat content of _____ percent (to be fixed within the range of 50 percent to 53 per cent), in such mixture is not less than _____ percent (to be fixed within the range of 15 percent to 20 percent) of the weight of the finished sweet chocolate.

(b) (1) When optional ingredient (1) is used, the label shall bear the statement "Alkali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used.

(2) When optional ingredient (2), (3), (4), or (5) is used, the label shall bear the statement "Milk Added" or "With Added Milk", "Skim Milk Added" or "With Added Skim Milk", "Buttermilk Added" or "With Added Buttermilk", "Malted Milk Added" or "With Added Malted Milk", as the case may be.

(3) When optional ingredient (6) is used, the label shall bear the statement "_____ Added" or "With Added _____", the blank to be filled in with the names of the ingredients in the combination. Such names shall be the names whereby such ingredients are designated in paragraph (2) of this subsection and shall appear in the order of the predominance, if any, of the weights of the milk constituent solids of such ingredients in the combination.

(4) When optional ingredient (7) is used, the label shall bear the statement "Lecithin Added" or "With Added Lecithin".

(5) When optional ingredient (10) is used, the label shall bear the statement "Artificially Flavored"; but in lieu of such statement the label may bear the statement "Artificial _____ Flavoring Added", the blank to be filled in with the common name or names of the artificial flavoring used.

(6) When optional ingredient (2), (3), (4), (5), or (6) and one or more of optional ingredients (1), (7), and (10) are used, the statements prescribed for such ingredients may be combined, as for example, "With Added Skim Milk, Baking Soda, Lecithin, and Artificial Vanillin Flavoring".

(7) Wherever the name "Sweet Chocolate" or "Sweet Chocolate Coating" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements herein prescribed showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

§14.030 *Milk chocolate, sweet milk chocolate, milk chocolate coating, sweet milk chocolate coating—identity; label statement of optional ingredients.* (a) Milk chocolate, sweet milk chocolate, milk chocolate coating, sweet milk chocolate coating, is the solid or plastic food composed of an intimate mixture of chocolate liquor and sugar or dextrose or both, with or without added cacao fat, and with not less than _____ percent (to be fixed within the range of 12 percent to 16 percent) by weight of the milk constituent solids of one or any combination of two or more of the following ingredients:

Concentrated milk; evaporated milk; sweetened condensed milk; dried whole milk; any combination of butter or milk fat and concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, or dried skim milk, in which the ratio of milk fat to non-fat milk solids is not less than 1 to 2.275; but if butter or milk fat is used, either in this ingredient or in or as optional ingredient (4), the ratio of total milk fat to total non-fat milk solids is not more than 1 to 1.2.

If an optional alkali ingredient was used in preparing such chocolate liquor, such optional alkali ingredient is optional ingredient (1) of the milk chocolate. Such mixture may also contain as an optional emulsifying ingredient—

(2) Lecithin, in a total quantity not more than 0.5 percent of the weight of the finished milk chocolate.

Such mixture may be seasoned with one or more of the following optional ingredients, added as such or as ingredients in the chocolate liquor used:

(3) Salt.

(4) Ground spice, ground vanilla beans, honey, butter or milk fat, any food flavoring oil or oleoresin or extract, or any combination of two or more of these; except any such article containing any artificial flavoring.

(5) Vanillin, ethyl vanillin, coumarin, other artificial food flavoring, or any combination of two or more of these; except any such article which is an imitation of butter flavor or milk flavor or chocolate flavor.

The quantity of chocolate liquor, calculated to a fat content of _____ percent

(to be fixed within the range of 50 percent to 53 percent), in such mixture is not less than _____ percent (to be fixed within the range of 10 percent to 15 percent) of the weight of the finished milk chocolate.

(b) (1) When optional ingredient (1) is used, the label shall bear the statement "Alkali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used.

(2) When optional ingredient (2) is used, the label shall bear the statement "Lecithin Added" or "With Added Lecithin".

(3) When optional ingredient (5) is used, the label shall bear the statement "Artificially Flavored"; but in lieu of such statement the label may bear the statement "Artificial _____ Flavoring Added", the blank to be filled in with the common name or names of the artificial flavoring used.

(4) When two or all of optional ingredients (1), (2), and (5) are used, the statements prescribed for such ingredients may be combined, as for example, "With Added Baking Soda, Lecithin, and Artificial Vanillin Flavoring".

(5) Wherever the name "Milk Chocolate", "Sweet Milk Chocolate", "Milk Chocolate Coating", or "Sweet Milk Chocolate Coating" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements herein prescribed showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

§ 14.040 *Skim milk chocolate, sweet skim milk chocolate, skim milk chocolate coating, sweet skim milk chocolate coating—identity: label statement of optional ingredients.* (a) Skim milk chocolate, sweet skim milk chocolate, skim milk chocolate coating, sweet skim milk chocolate coating, is the solid or plastic food composed of an intimate mixture of chocolate liquor and sugar or dextrose or both, with or without added cacao fat, and with not less than _____ percent (to be fixed within the range of 12 percent to 16 percent) by weight of the milk constituents solids of one or any combination of two or more of the following ingredients:

Concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, and dried skim milk.

If an optional alkali ingredient was used in preparing such chocolate liquor, such optional alkali ingredient is optional ingredient (1) of the skim milk chocolate. Such mixture may also contain as an optional emulsifying ingredient—

(2) Lecithin, in a total quantity not more than 0.5 percent of the weight of the finished skim milk chocolate.

Such mixture may be seasoned with one or more of the following optional ingredients, added as such or as ingredients in the chocolate liquor used:

(3) Salt.

(4) Ground spice, ground vanilla beans, honey, any food flavoring oil or oleoresin or extract, or any combination of two or more of these; except any such article containing any artificial flavoring.

(5) Vanillin, ethyl vanillin, coumarin, other artificial food flavoring, or any combination of two or more of these; except any such article which is an imitation of butter flavor or milk flavor or chocolate flavor.

The quantitity of chocolate liquor, calculated to a fat content of _____ percent (to be fixed within the range of 50 percent to 53 percent), in such mixture is not less than _____ percent (to be fixed within the range of 10 percent to 15 percent) of the weight of the finished skim milk chocolate.

(b) (1) When optional ingredient (1) is used, the label shall bear the statement "Alkali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used.

(2) When optional ingredient (2) is used, the label shall bear the statement "Lecithin Added" or "With Added Lecithin".

(3) When optional ingredient (5) is used, the label shall bear the statement "Artificially Flavored"; but in lieu of such statement the label may bear the statement "Artificial _____ Flavoring Added", the blank to be filled in with the common name or names of the artificial flavoring used.

(4) When two or all of optional ingredients (1), (2), and (5) are used, the statements prescribed for such ingredients may be combined, as for example, "With Added Baking Soda, Lecithin, and Artificial Vanillin Flavoring".

(5) Whenever the name "Skim Milk Chocolate", "Sweet Skim Milk Chocolate", "Skim Milk Chocolate Coating", or "Sweet Skim Milk Chocolate Coating" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements herein prescribed showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

§ 14.050 *Buttermilk chocolate, buttermilk chocolate coating—identity; label statement of optional ingredients.* (a) Buttermilk chocolate, buttermilk chocolate coating, is the solid or plastic food composed of an intimate mixture of chocolate liquor and sugar or dextrose or both, with or without added cacao fat, and with not less than _____ percent (to be fixed within the range of 12 percent to 16 percent) by weight of the solids of concentrated buttermilk or dried buttermilk or both. If an optional alkali ingredient was used in preparing such chocolate liquor, such optional alkali ingredient is optional ingredient (1) of the buttermilk chocolate. Such mixture may also contain as an optional emulsifying ingredient—

(2) Lecithin, in a total quantity not more than 0.5 percent of the weight of the finished buttermilk chocolate.

Such mixture may be seasoned with one or more of the following optional ingredients, added as such or as ingredients in the chocolate liquor used:

(3) Salt.

(4) Ground spice, ground vanilla beans, honey, any food flavoring oil or oleoresin or extract, or any combination of two or more of these; except any such article containing any artificial flavoring.

(5) Vanillin, ethyl vanillin, coumarin, other artificial food flavoring, or any combination of two or more of these; except any such article which is an imitation of butter flavor or milk flavor or buttermilk flavor or chocolate flavor.

The quantity of chocolate liquor, calculated to a fat content of _____ percent (to be fixed within the range of 50 percent to 53 percent), in such mixture is not less than _____ percent (to be fixed within the range of 10 percent to 15 percent) of the weight of the finished buttermilk chocolate.

(b) (1) When optional ingredient (1) is used, the label shall bear the statement "Alkali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used.

(2) When optional ingredient (2) is used, the label shall bear the statement "Lecithin Added" or "With Added Lecithin".

(3) When optional ingredient (5) is used, the label shall bear the statement "Artificially Flavored"; but in lieu of such statement the label may bear the statement "Artificial _____ Flavoring Added", the blank to be filled in with the common name or names of the artificial flavoring used.

(4) When two or all of optional ingredients (1), (2), and (5) are used, the statements prescribed for such ingredients may be combined, as for example, "With Added Baking Soda, Lecithin, and Artificial Vanillin Flavoring".

(5) Wherever the name "Buttermilk Chocolate" or "Buttermilk Coating" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements herein prescribed showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

§ 14.060 *Mixed milk, skim milk, buttermilk, malted milk, chocolate and chocolate coating—identity; label statement of optional ingredients.* (a) The articles for which definitions and standards of identity are prescribed by this section are the solid or plastic food each of which is composed of an intimate mixture of chocolate liquor and sugar or dex-

trose or both, with or without added cacao fat, and with not less than ------ percent (to be fixed within the range of 12 percent to 16 percent) by weight of the milk constituent solids of any combination of two or more of the following optional dairy ingredients (1), (2), (3), and (4):

(1) Concentrated milk; evaporated milk; sweetened condensed milk; dried whole milk; any combination of butter or milk fat and concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, or dried skim milk, in which the ratio of milk fat to non-fat milk solids is not less than 1 to 2.275; or any combination of two or more of these; but if butter or milk fat is used, either in this optional ingredient or in or as optional ingredient (8), the ratio of total milk fat to total non-fat milk solids in such ingredients is not more than 1 to 1.2.

(2) Concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, dried skim milk, or any combination of two or more of these.

(3) Concentrated buttermilk, dried buttermilk, or any combination or these.

(4) Malted milk.

The weights of the milk constituent solids of such ingredients in such combination are equal, or the weight of the milk constituent solids present in the smallest proportion is not less than one-third the weight of the milk constituent solids present in the largest proportion. If an optional alkali ingredient was used in preparing such chocolate liquor, such optional alkali ingredient is optional ingredient (5) of the article for which a definition and standard of identity is prescribed by this section. Such mixture may also contain as an optional emulsifying ingredient—

(6) Lecithin, in a total quantity not more than 0.5 percent of the weight of the finished article.

Such mixture may be seasoned with one or more of the following optional ingredients, added as such or as ingredients in the chocolate liquor used:

(7) Salt.

(8) Ground spice, ground vanilla beans, honey, butter or milk fat, any food flavoring oil or oleoresin or extract, or any combination of two or more of these; except any such article containing any artificial flavoring.

(9) Vanillin, ethyl vanillin, coumarin, other artificial food flavoring, or any combination of two or more of these; except any such article which is an imitation of butter flavor or milk flavor or chocolate flavor.

The quantity of chocolate liquor, calculated to a fat content of ------ percent (to be fixed within the range of 50 percent to 53 percent), in such mixture is not less than ------ percent (to be fixed within the range of 10 percent to 15 percent) of the weight of the finished article.

(b) The name of each article for which a definition and standard of identity is prescribed by this section is "-------- Chocolate" or "---------- Chocolate Coating", the blank to be filled in with the names of the ingredients in the combination of optional dairy ingredients in the order of the predominance, if any, of the weights of the milk constituent solids of such ingredients in the combination. For the purposes of this section, the names of optional dairy ingredients (1), (2), (3), and (4) are, respectively, "Milk" or "Sweet Milk", "Skim Milk" or "Sweet Skim Milk", "Buttermilk", and "Malted Milk".

(c) (1) When optional ingredient (5) is used, the label shall bear the statement "Alkali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used.

(2) When optional ingredient (6) is used, the label shall bear the statement "Lecithin Added" or "With Added Lecithin".

(3) When optional ingredient (9) is used, the label shall bear the statement "Artificially Flavored"; but in lieu of such statement the label may bear the statement "Artificial ---------- Flavoring Added", the blank to be filled in with the common name or names of the artificial flavoring used.

(4) When two or all of optional ingredients (5), (6), and (9) are used, the statements prescribed for such ingredients may be combined, as for example, "With Added Baking Soda, Lecithin, and Artificial Vanillin Flavoring".

(5) Whenever the name of the article for which a definition and standard of identity is prescribed by this section appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements herein prescribed showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

§ 14.070 *Cocoa, medium-fat cocoa—identity; label statement of optional ingredients.* (a) Cocoa, medium-fat cocoa, is the powdered food prepared by removing part of the fat from ground cacao nibs and pulverizing the residual material. It contains not less than ------ percent (to be fixed within the range of 8 percent to 12 percent), but less than ------ percent (to be fixed within the range of 22 percent to 25 percent), of cacao fat as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fifth Edition, 1940, page 202, under "Fat Method I—Official". To darken the color and otherwise modify the properties, part or all of the cocoa, or of the cacao beans or cacao nibs or ground cacao nibs used in its preparation, may be processed by heat with the optional alkali ingredient—

(1) Bicarbonate, carbonate, or hydroxide of sodium or potassium, or carbonate or oxide of magnesium, or any combination of two or more of these; but the total quantity, for each 100 parts by weight of ground cacao nibs from which the cocoa is prepared, of any such substance or combination of substances used in such processing is not greater in neutralizing value than ------ parts (to be fixed within the range of 1 part to 3 parts) by weight of anhydrous potassium carbonate, as calculated from the respective combining weights of such alkalis.

It may be seasoned with one or more of the following optional ingredients:

(2) Salt.

(3) Ground spice, ground vanilla beans, any food flavoring oil or oleoresin or extract, or any combination of two or more of these; except any such article containing any artificial flavoring.

(4) Vanillin, ethyl vanillin, coumarin, other artificial food flavoring, or any combination of two or more of these; except any such article which is an imitation of butter flavor or milk flavor or chocolate flavor.

(b) (1) When optional ingredient (1) is used, the label shall bear the statement "Alakali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used.

(2) When optional ingredient (3) is used, the label shall bear the statement "Seasoning Added" or "With Added Seasoning"; but in lieu of such statement the label may bear the statement "Seasoned With ----------", the blank to be filled in with the common name or names of the seasoning used.

(3) When optional ingredient (4) is used, the label shall bear the statement "Artificially Flavored"; but in lieu of such statement the label may bear the statement "Artificial ---------- Flavoring Added", the blank to be filled in with the common name or names of the artificial flavoring used.

(4) When two or all of optional ingredients (1), (3), and (4) are used, the statements prescribed for such ingredients may be combined, as for example, "With Added Alkali, Cinnamon, and Artificial Vanillin Flavoring".

(5) Wherever the name "Cocoa" or "Medium-Fat Cocoa" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements herein prescribed showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

§ 14.080 *Breakfast cocoa, high-fat cocoa—identity; label statement of optional ingredients.* (a) Breakfast cocoa, high-fat cocoa, is the powdered food prepared by removing part of the fat from ground cacao nibs and pulverizing the residual material. It contains not less

than ------ percent (to be fixed within the range of 22 percent to 25 percent) of cacao fat as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fifth Edition, 1940, page 202, under "Fat Method I—Official". To darken the color and otherwise modify the properties, part or all of the breakfast cocoa, or of the cacao beans or cacao nibs or ground cacao nibs used in its preparation, may be processed by heat with the optional alkali ingredient—

(1) Bicarbonate, carbonate, or hydroxide of sodium or potassium, or carbonate or oxide of magnesium, or any combination of two or more of these; but the total quantity, for each 100 parts by weight of ground cacao nibs from which the breakfast cocoa is prepared, of any such substance or combination of substances used in such processing is not greater in neutralizing value than ------ parts (to be fixed within the range of 1 part to 3 parts) by weight of anhydrous potassium carbonate, as calculated from the respective combining weights of such alkalis.

It may be seasoned with one or more of the following optional ingredients:

(2) Salt.

(3) Ground spice, ground vanilla beans, any food flavoring oil or oleoresin or extract, or any combination of two or more of these; except any such article containing any artificial flavor.

(4) Vanillin, ethyl vanillin, coumarin, other artificial food flavoring, or any combination of two or more of these; except any such article which is an imitation of butter flavor or milk flavor or chocolate flavor.

(b) (1) When optional ingredient (1) is used, the label shall bear the statement "Alkali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used.

(2) When optional ingredient (3) is used, the label shall bear the statement "Seasoning Added" or "With Added Seasoning"; but in lieu of such statement the label may bear the statement "Seasoned With ----------", the blank to be filled in with the common name or names of the seasoning used.

(3) When optional ingredient (4) is used, the label shall bear the statement "Artificially Flavored"; but in lieu of such statement the label may bear the statement "Artificial ---------- Flavoring Added", the blank to be filled in with the common name or names of the artificial flavoring used.

(5) When two or all of optional ingredients (1), (3), and (4) are used, the statements prescribed for such ingredients may be combined, as for example, "With Added Alkali, Cinnamon, and Artificial Vanillin Flavoring".

(6) Wherever the name "Breakfast Cocoa" or "High-Fat Cocoa" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements herein prescribed showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

§ 14.090 *Low-fat cocoa—identity; label statement of optional ingredients.* (a) Low-fat cocoa is the powdered food prepared by removing part of the fat from ground cacao nibs and pulverizing the residual material. It contains not less than ------ percent (to be fixed within the range of 1 percent to 3 percent), but less than ------ percent (to be fixed within the range of 8 percent to 12 percent), of cacao fat as determined by the method prescribed in "Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists", Fifth Edition, 1940, page 202, under "Fat Method I—Official". To darken the color and otherwise modify the properties, part or all of the low-fat cocoa, or of the cacao beans or cacao nibs or ground cacao nibs used in its preparation, may be processed by heat with the optional alkali ingredient—

(1) Bicarbonate, carbonate, or hydroxide of sodium or potassium, or carbonate or oxide of magnesium, or any combination of two or more of these; but the total quantity, for each 100 parts by weight of ground cacao nibs from which the low-fat cocoa is prepared, of any such substance or combination of substances used in such processing is not greater in neutralizing value than ------ parts (to be fixed within the range of 1 part to 3 parts) by weight of anhydrous potassium carbonate, as calculated from the respective combining weights of such alkalis.

It may be seasoned with one or more of the following optional ingredients:

(2) Salt.

(3) Ground spice, ground vanilla beans, any food flavoring oil or oleoresin or extract, or any combination of two or more of these; except any such article containing any artificial flavoring.

(4) Vanillin, ethyl vanillin, coumarin, other artificial food flavoring, or any combination of two or more of these; except any such article which is an imitation of butter flavor or milk flavor or chocolate flavor.

(b) (1) When optional ingredient (1) is used, the label shall bear the statement "Alkali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used.

(2) When optional ingredient (3) is used, the label shall bear the statement "Seasoning Added" or "With Added Seasoning"; but in lieu of such statement the label may bear the statement "Seasoned With ----------", the blank to be filled in with the common name or names of the seasoning used.

(3) When optional ingredient (4) is used, the label shall bear the statement "Artificially Flavored"; but in lieu of such statement the label may bear the statement "Artificial ---------- Flavoring Added", the blank to be filled in with the common name or names of the artificial flavoring used.

(4) When two or all of optional ingredients (1), (3), and (4) are used, the statements prescribed for such ingredients may be combined, as for example, "With Added Alkali, Cinnamon, and Artificial Vanillin Flavoring".

(5) Wherever the name "Low-Fat Cocoa" appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements herein prescribed showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.

§ 14.100 *Sweet cocoa and fat (other than cacao fat) coatings—identity; label statement of optional ingredients.* (a) The articles for which definitions and standards of identity are prescribed by this section are the solid or plastic food each of which is composed of an intimate mixture of cocoa, breakfast cocoa, low-fat cocoa, or any combination of two or all of these, sugar or dextrose or both, and one or any combination of two or more vegetable food oils, fats, and stearins other than cacao fat. Such oils and fats may be hydrogenated. If an optional alkali ingredient was used in preparing such cocoa, breakfast cocoa, or low-fat cocoa, such optional alkali ingredient is optional ingredient (1) of the article for which a definition and standard of identity is prescribed by this section. Such mixture may also contain not less than ------ percent (to be fixed within the range of 5 percent to 7 percent) by weight of the milk constituent solids of one of the following optional dairy ingredients (2), (3), (4), (5), and (6):

(2) Concentrated milk; evaporated milk, sweetened condensed milk; dried whole milk; any mixture of butter or milk fat and concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, or dried skim milk, in which the ratio of milk fat to non-fat milk solids is not less than 1 to 2.275 nor more than 1 to 1.2; or any combination of two or more of these.

(3) Concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, dried skim milk, or any combination of two or more of these.

(4) Concentrated buttermilk, dried buttermilk, or any combination of these.

(5) Malted milk.

(6) Any combination of two or more of optional dairy ingredients (2), (3),

(4), and (5) in which the weights of the milk constituent solids of such ingredients are equal, or in which the weight of the milk constituent solids present in the smallest proportion is not less than one-third the weight of the milk constituent solids present in the largest proportion.

Such mixture may also contain the optional emulsifying ingredient—

(7) Lecithin, in a quantity not more than 0.5 percent of the weight of the finished article.

Such mixture may be seasoned with one or more of the following optional ingredients, added as such or as ingredients in the cocoa, breakfast cocoa, or low-fat cocoa used:

(8) Salt.

(9) Ground spice, ground vanilla beans, honey, any food flavoring oil or oleoresin or extract, or any combination of two or more of these; except any such article containing any artificial flavoring.

(10) Vanillin, ethyl vanillin, coumarin, other artificial food flavoring, or any combination of two or more of these; except any such article which is an imitation of butter flavor or milk flavor or chocolate flavor.

The quantity of cocoa, breakfast cocoa, low-fat cocoa, or combination thereof, calculated to a fat content of 10 percent, in such mixture is not less than _____ percent (to be fixed within the range of 8 percent to 12 percent) of the weight of the finished article.

(b) The name of each article for which a definition and standard of identity is prescribed by this section is "Sweet Cocoa and _____ Coating" or "Cocoa and _____ Coating", the blank to be filled in with the common or usual name or names of the vegetable food oils, fats, and stearins used. If such oil or fat is hydrogenated, its name includes the word "Hardened". If two or more of such oils, fats, and stearins are used, the names thereof are filled in the blank in the order of the predominance, if any, of the weights thereof used.

(c) (1) When optional ingredient (1) is used, the label shall bear the statement "Alkali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used.

(2) When optional ingredient (2), (3), (4), or (5) is used, the label shall bear the statement "Milk Added" or "With Added Milk", "Skim Milk Added" or "With Added Skim Milk", "Buttermilk Added" or "With Added Buttermilk", "Malted Milk Added" or "With Added Malted Milk", as the case may be.

(3) When optional ingredient (6) is used, the label shall bear the statement "_____ Added" or "With Added _____", the blank to be filled in with the names of the ingredients in the combination. Such names shall be names whereby such ingredients are designated in paragraph (2) of this subsection and shall appear in the order of the predominance, if any, of the weights of the milk constituent solids of such ingredients in the combination.

(4) When optional ingredient (7) is used, the label shall bear the statement "Lecithin Added" or "With Added Lecithin".

(5) When optional ingredient (10) is used, the label shall bear the statement "Artificially Flavored"; but in lieu of such statement the label may bear the statement "Artificial _____ Flavoring Added", the blank to be filled in with the common name or names of the artificial flavors used.

(6) When optional ingredient (2), (3), (4), (5), or (6) and one or more of optional ingredients (1), (7), and (10) are used, the statements prescribed for such ingredients may be combined, as for example, "With Added Skim Milk, Baking Soda, Lecithin, and Artificial Coumarin Flavoring."

(7) Wherever the name of the article for which a definition and standard of identity is prescribed by this section appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements herein prescribed showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without any intervening written, printed, or graphic matter.

§ 14.110 *Sweet chocolate and fat (other than cacao fat) coatings—identity; label statement of optional ingredients.* (a) The articles for which definitions and standards of identity are prescribed by this section are the solid or plastic food each of which is composed of an intimate mixture of chocolate liquor and sugar or dextrose or both, and one or any combination of two or more vegetable food oils, fats, and stearins other than cacao fat. Such oils and fats may be hydrogenated. If an optional alkali ingredient was used in preparing such chocolate liquor, such optional alkali ingredient is optional ingredient (1) of the article for which a definition and standard of identity is prescribed by this section. Such mixture may also contain not less than _____ percent (to be fixed within the range of 5 percent to 7 percent) by weight of the milk constituent solids of one of the following optional dairy ingredients (2), (3), (4), (5), and (6):

(2) Concentrated milk; evaporated milk, sweetened condensed milk; dried whole milk; any mixture of butter or milk fat and concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, or dried skim milk, in which the ratio of milk fat to non-fat milk solids is not less than 1 to 2.275 nor more than 1 to 1.2; or any combination of two or more of these.

(3) Concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, dried skim milk, or any combination of two or more of these.

(4) Concentrated buttermilk, dried buttermilk, or any combination of these.

(5) Malted milk.

(6) Any combination of two or more of optional ingredients (2), (3), (4), and (5) in which the weights of the milk constituent solids of such ingredients are equal, or in which the weight of the milk constituent solids present in the smallest proportion is not less than one-third the weight of the milk constituent solids present in the largest proportion.

Such mixture may also contain the optional emulsifying ingredient—

(7) Lecithin, in a quantity not more than 0.5 percent of the weight of the finished article.

Such mixture may be seasoned with one or more of the following optional ingredients, added as such or as ingredients in the chocolate liquor used:

(8) Salt.

(9) Ground spice, ground vanilla beans, honey, any food flavoring oil or oleoresin or extract, or any combination of two or more of these; except any such article containing any artificial flavoring.

(10) Vanillin, ethyl vanillin, coumarin, other artificial food flavoring, or any combination of two or more of these; except any such article which is an imitation of butter flavor or milk flavor or chocolate flavor.

The quantity of chocolate liquor, calculated to a fat content of _____ percent (to be fixed within the range of 50 percent to 53 percent), in such mixture is not less than _____ percent (to be fixed within the range of 15 percent to 20 percent) of the weight of the finished article.

(b) The name of each article for which a definition and standard of identity is prescribed by this section is "Sweet Chocolate and _____ Coating" or "Chocolate and _____ Coating", the blank to be filled in with the common or usual name or names of the vegetable food oils, fats, and stearins used. If such oil or fat is hydrogenated, its name includes the word "Hardened". If two or more of such oils, fats, and stearins are used, the names thereof are filled in the blank in the order of the predominance, if any, of the weights thereof used.

(c) (1) When optional ingredient (1) is used, the label shall bear the statement "Alkali Added" or "With Added Alkali"; but in lieu of the word "Alkali" in such statements the common name or names of the alkali may be used.

(2) When optional ingredient (2), (3), (4), or (5) is used, the label shall bear the statement "Milk Added" or "With Added Milk", "Skim Milk Added" or "With Added Skim Milk," "Buttermilk Added" or "With Added Buttermilk", "Malted Milk Added" or "With Added Malted Milk", as the case may be.

(3) When optional ingredient (6) is used, the label shall bear the statement "_____ Added" or "With Added _____", the blank to be filled in with

the names of the ingredients in the combination. Such names shall be names whereby such ingredients are designated in paragraph (2) of this subsection and shall appear in the order of the predominance, if any, of the weights of the milk constituent solids of such ingredients in the combination.

(4) When optional ingredient (7) is used, the label shall bear the statement "Lecithin Added" or "With Added Lecithin".

(5) When optional ingredient (10) is used, the label shall bear the statement "Artificially Flavored"; but in lieu of such statement the label may bear the statement "Artificial _____ Flavoring Added", the blank to be filled in with the common name or names of the artificial flavors used.

(6) When optional ingredient (2), (3), (4), (5), or (6) and one or more of optional ingredients (1), (7), and (10) are used, the statements prescribed for such ingredients may be combined, as for example, "With Added Skim Milk, Baking Soda, Lecithin, and Artificial Coumarin Flavoring".

(7) Wherever the name of the article for which a definition and standard of identity is prescribed by this section appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements herein prescribed showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without any intervening written, printed, or graphic matter.

In connection with the foregoing proposals evidence will be received with respect to the use of optional ingredients other than those specified in the proposals.

WAYNE COY,
Acting Federal Security Administrator.

OCTOBER 11, 1940.

[F. R. Doc. 40-4414; Filed, October 18, 1940; 10:26 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File No. 70-158]

IN THE MATTER OF LEONARD S. FLORSHEIM, TRUSTEE, INLAND POWER & LIGHT CORPORATION AND MICHIGAN PUBLIC SERVICE COMPANY

ORDER GRANTING APPLICATION AND PERMITTING DECLARATIONS TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 16th day of October, A. D. 1940.

Leonard S. Florsheim, Trustee of Inland Power & Light Corporation, Debtor, appointed Trustee of said corporation by the District Court of the United States for the Northern District of Illinois, Eastern Division, in proceedings entitled "In the Matter of Commonwealth Light & Power Corporation, a corporation, Debtor; Inland Power & Light Corporation, a corporation, Debtor, consolidated proceedings for the reorganization of certain corporations, No. 52028," having filed a declaration and amendments thereto pursuant to Section 12 (d) of the Public Utility Holding Company Act of 1935 and Rule U-12D-1 promulgated thereunder, and Michigan Public Service Company, a subsidiary of the trust estate, having filed an application and amendments thereto pursuant to Section 6 (b), and a declaration pursuant to Section 7, of the Act as to the following:

The sale by Leonard S. Florsheim, Trustee of Inland Power & Light Corporation, Debtor, to underwriters for distribution to the public for the consideration of $1,045,134.24, of all of the outstanding shares of common stock of Michigan Public Service Company consisting of $5,000 shares without par value, which shares are owned beneficially by said trustee;

The surrender by Leonard S. Florsheim, Trustee of Inland Power & Light Corporation, Debtor, to Michigan Public Service Company of $620,134.24 in principal amount of 6¼% Promissory Demand Notes of Michigan Public Service Company held by Leonard S. Florsheim, Trustee of Inland Power & Light Corporation, Debtor, among the free assets of the trust estate, to said company for cancellation as contribution to its capital;

The issuance and sale by Michigan Public Service Company to underwriters for distribution to the public of $3,500,000 principal amount of First Mortgage Bonds due October 1, 1965 and $750,000 principal amount of 4% Serial Debentures maturing in the amount of $75,000 each year over a period of ten years, the proceeds to be applied to the redemption of $3,943,000 principal amount of outstanding First Mortgage 5% Gold Bonds, Series A, due April 1, 1965 and to reimburse in part its treasury for additions and extensions to its plant and properties;

The issuance by Michigan Public Service Company of up to 7,321 shares of a new issue of preferred stock (6% Series of 1940) which series will not as is the case with the present 7% and 6% Series be redeemable December 31, 1956, for the purpose of offering such shares in exchange for 1,308 shares of 7% preferred and 6,013 shares of 6% preferred, being the totals respectively of such shares issued and outstanding, the basis of such exchange to be one share of new 6% preferred plus $7 in cash for each share of said 7% series and one share of new 6% preferred for each share of said 6% series;

The amendment by Michigan Public Service Company of its articles of incorporation so as to cancel authorized unissued shares of preferred stock, 7% series, 6½% series (no shares of which are now outstanding) and 6% series; to create a new series of preferred stock, designated 6% series of 1940, of the par value of $100 per share, and consisting of 25,000 authorized shares, which series, as mentioned above, will not contain a provision for mandatory redemption on December 31, 1956, as is the case with the present 6% and 7% series; and to provide that no holder of common stock of Michigan Public Service Company shall be entitled, as such, as a matter of right, to subscribe for or purchase any shares of the new preferred stock which may be issued in exchange for outstanding shares of Michigan's preferred stock, 7% or 6% series;

The releasing by Leonard S. Florsheim, Trustee of Inland Power & Light Corporation, Debtor, as holder of all of the outstanding shares of common stock, contemporaneously with the sale of such common stock, by a written agreement, from the preemptive right of subscription now appertaining to said outstanding shares of common stock of Michigan Public Service Company, any and all shares, now or hereafter authorized, of common stock and of preferred stock of any series which may hereafter be issued and sold by said company for the purpose of providing funds for the purchase by it of the properties of one or more other public utility corporations, or for the retirement or discharge of any outstanding securities of any character of said company;

The payment by Michigan Public Service Company as part of the above program by means of the increased cash position resulting from such refinancing and the cancellation of the demand notes, of the cumulative preferred dividends now in arrears on the 7% and 6% preferred stock of Michigan Public Service Company and its $6 Junior Preferred Stock in the aggregate amount of $135,110.25;

A public hearing having been duly held in this matter after appropriate notice, the Commission having examined the record in this matter and having filed its findings and opinion herein;

It is ordered, That the declaration of Leonard S. Florsheim, Trustee of Inland Power & Light Corporation, Debtor, under section 12 (d) of the Act and Rule U-12D-1 promulgated thereunder, as to the sale of the common stock and the surrender of the promissory notes be and become effective forthwith.

It is further ordered, That the application of Michigan Public Service Company pursuant to section 6 (b) of the Act as to the issue and sale of its bonds and debentures and the issue of its new preferred stock for the purpose of exchange be and the same is hereby approved;

It is further ordered, That the declaration of Michigan Public Service Company pursuant to section 7 of the Act as to the amendment of its articles of incorporation as set forth above and the change of the preemptive right of subscription now appertaining to its outstanding shares of common stock by the written consent and release to be exe-

cuted by the holders of all of the outstanding shares of common stock be and become effective forthwith; and

It is further ordered, That the above application and declarations are respectively granted and permitted to become effective, subject, however, to the terms and conditions prescribed in Rule U-9 promulgated under said Act and the following conditions:

(1) That to fill the three vacancies that will exist on the Board of Directors of Michigan Public Service Company for which no selections have as yet been made, as set forth in the statement of the underwriters in testimony presented in these proceedings, three members of the board of seven directors as now constituted shall be named to serve on the Board by a Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, in the proceedings entitled "In the Matter of Commonwealth Light & Power Corporation, a corporation, Debtor; Inland Power & Light Corporation, a corporation, Debtor, Consolidated Proceedings for the Reorganization of Certain Corporations, No. 52028," on or before October twenty-first, 1940.

(2) That when all expenses incurred in connection with the issue and sale of said bonds and debentures shall have been actually paid Leonard S. Florsheim, Trustee of Inland Power & Light Corporation, Debtor and the Michigan Public Service Company shall file with this Commission a detailed statement of such expenses showing the names of persons or entities to whom such payments may be made, the amount of such payments, the accounts charged and a detailed description of the services rendered in connection with the above transactions.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-4417; Filed, October 18, 1940; 11:34 a. m.]

IN THE MATTER OF JOHN O'BRIEN, DOING BUSINESS AS JOHN O'BRIEN & COMPANY, 90 STATE STREET, ALBANY, NEW YORK

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING ON THE QUESTION OF REVOCATION AND SUSPENSION OF REGISTRATION PURSUANT TO SECTION 15 (B) OF THE SECURITIES EXCHANGE ACT OF 1934

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 16th day of October 1940.

I

The Commission's public official files disclose that:

John O'Brien, doing business as John O'Brien & Company, a sole proprietorship, is registered as an over-the-counter broker and dealer pursuant to Section 15 of the Securities Exchange Act of 1934.

II

Members of its staff having reported to the Commission information obtained as a result of an investigation of said registrant which tends to show that:

A

Said registrant was convicted on or about January 15, 1940, of a felony arising out of the conduct of the business of a broker and dealer.

B

Said registrant was, on or about September 13, 1940, permanently enjoined by order of the Supreme Court in and for the City and County of Albany, New York, from engaging in and continuing certain conduct and practices in connection with the purchase and sale of securities within and from the State of New York.

III

The Commission having considered such information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statements set forth in Subparagraphs A and B of Paragraph II hereof are true;

(b) Whether it is in the public interest to revoke or suspend the registration of said registrant under Section 15 (b) of the Securities Exchange Act of 1934.

It is ordered, That proceedings be held to determine whether the registration of John O'Brien, doing business as John O'Brien & Company, a sole proprietorship, should be revoked or suspended, pursuant to the provisions of Section 15 (b) of the Securities Exchange Act of 1934.

It is further ordered, That a hearing for the purpose of taking testimony be held at 10:00 A. M. on November 19, 1940, at the New York Regional Office of the Securities and Exchange Commission, 120 Broadway, New York, New York, and that said hearing be continued at such other time and place as the Commission or officer conducting said hearing may determine; that for the purpose of said hearing Adrian C. Humphreys be and he is hereby designated as the officer of the Commission and, pursuant to Section 21 (b) of the Securities Exchange Act of 1934 said officer is hereby authorized to administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, require the production of books, papers, correspondence, memoranda and any and all other records deemed relevant or material to the matters in issue at said hearing, and to perform all other duties in connection therewith as authorized by law.

It is further ordered, That this order and notice be served on said registrant personally or by registered mail not less than seven (7) days prior to the time of hearing, or in the event of failure to serve the registrant personally or by registered mail that this order and notice be published in the FEDERAL REGISTER in the manner prescribed by the Federal Register Act.

Upon the completion of the taking of testimony in this matter, the officer conducting said hearing is directed to conclude said hearing, make his report to the Commission and transmit same with a record of this hearing to the Commission.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-4418; Filed, October 18, 1940; 11:35 a. m.]

[File Nos. 70-150, 70-151]

IN THE MATTER OF FLORIDA PUBLIC SERVICE COMPANY, GEORGIA POWER AND LIGHT COMPANY

ORDER GRANTING EXEMPTIONS

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 17th day of October, A. D. 1940.

Florida Public Service Company, an operating public utility subsidiary in the Associated Gas and Electric Company system, having filed an application pursuant to section 9 (c) (3) of the Public Utility Holding Company Act of 1935 seeking an exemption from the provisions of section 9 (a) (1) of said Act for the acquisition from dealers of customers' installment paper in an aggregate principal amount not to exceed $175,000;

Georgia Power and Light Company, an associate company of Florida Public Service Company and accordingly an operating public utility subsidiary in the Associated Gas and Electric Company system, having filed an application pursuant to section 9 (c) (3) of the Act seeking an exemption from the provisions of section 9 (a) (1) of said Act for the acquisition from dealers of customers' installment paper in an aggregate principal amount not to exceed $50,000;

A consolidated hearing[1] on said applications having been duly held after appropriate notice; the record having been examined; and the Commission having made and filed its findings herein;

It is ordered, That the exemptions from the provisions of section 9 (a) (1) of the Public Utility Holding Company Act of 1935 sought by said applications as amended, be, and the same hereby are granted, subject, however, to the following conditions:

1. That the acquisition for which exemptions are hereby granted shall be made in compliance with the terms and conditions of, and for the purposes represented by, said applications as amended;

[1] 5 F.R. 3825.

2. That the Commission reserve jurisdiction, after notice and opportunity for hearing, to revoke or modify this order if it appears that further acquisitions pursuant thereto would be inconsistent with any provisions of the Public Utility Holding Company Act of 1935, or any rule or regulation thereunder, or any terms or conditions of this order, or if it shall appear that further exercise of the exemptions hereby granted will be detrimental to the public interest or the interest of investors or consumers. Pending final determination respecting the revocation or modification of this order, the Commission may summarily suspend the exemptions hereby granted.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-4416; Filed, October 18, 1940; 11:34 a. m.]

[File No. 70-178]

IN THE MATTER OF PUBLIC SERVICE COMPANY OF OKLAHOMA AND SOUTHWESTERN LIGHT & POWER COMPANY

NOTICE REGARDING FILING SUBJECT TO RULE U-8

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 18th day of October, A. D. 1940.

Notice is hereby given that a declaration and application have been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by the above named parties; and

Notice is further given that any interested person may, not later than November 4, 1940, at 4:30 P. M., E. S. T., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request and the nature of his interest, or may request that he be notified if the Commission should order a hearing thereon. At any time thereafter such declaration and application, as filed or as amended, may become effective or may be granted as provided in Rule U-8 of the Rules and Regulations promulgated pursuant to said Act. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C.;

All interested persons are referred to said declaration and application which are on file in the office of said Commission for a statement of the transactions therein proposed, which are summarized below:

Southwestern Light & Power Company (hereinafter referred to as "Southwestern") proposes to dissolve and to transfer and convey to its parent, Public Service Company of Oklahoma (hereinafter referred to as "Oklahoma"), a subsidiary of The Middle West Corporation, a registered holding company, in liquidation of all shares of the capital stock of Southwestern then owned by Oklahoma, all the utility assets and other assets of every kind and nature of Southwestern and Oklahoma proposes to acquire all such assets. For the purpose of effecting this principal transaction, Oklahoma proposes:

(a) to assume the due and punctual payment of the principal of and the interest on $6,750,000 principal amount of First Mortgage Bonds, Series A, 3¾%, due December 1, 1969, of Southwestern, in accordance with the provisions of Section 1 of Article XIV of the Indenture dated December 1, 1939, executed by Southwestern to City National Bank and Trust Company of Chicago and Arthur T. Leonard, as Trustees, under which Indenture said bonds are outstanding, provided, however, that in case the redemption and retirement of all said bonds of Southwestern should be provided for through a refunding operation consummated on or about the date of the acquisition by Oklahoma of the assets of Southwestern, then no such assumption with respect to said bonds of Southwestern shall be made by Oklahoma;

(b) to acquire from The Middle West Corporation 10,657 shares of $6 Preferred Stock of Southwestern now owned by The Middle West Corporation and to issue and deliver in exchange therefor 10,657 shares of Five Per Cent Prior Lien Stock of Oklahoma of the par value of $100 per share, provided, however, that, in case the redemption and retirement of substantially all outstanding Seven Per Cent Prior Lien Stock and Six Per Cent Prior Lien Stock of Oklahoma should be provided for through a refunding operation consummated on or about the date of the acquisition by Oklahoma of the assets of Southwestern, then the 10,657 shares to be issued and delivered by Oklahoma to The Middle West Corporation shall be shares of the same class, series and dividend rate as are publicly offered by Oklahoma to accomplish the refunding of the shares of its Seven Per Cent Prior Lien Stock and Six Per Cent Prior Lien Stock now outstanding;

(c) to pay to the holders of all outstanding publicly held shares of the capital stock of Southwestern (exclusive of shares of Southwestern now owned by Oklahoma or to be acquired by Oklahoma in exchange, as stated in the next preceding paragraph hereof), upon the surrender by such holders to Southwestern for cancellation and retirement by it of the shares of Southwestern owned by such holders, the following amounts:

1. For 25,896 shares of the $6 Preferred Stock of Southwestern, $100 per share and accrued and unpaid dividends thereon to the date of liquidation of Southwestern;

2. For 433 shares of Class A Common Stock of Southwestern, $100 per share and accrued and unpaid dividends thereon to the date of liquidation of Southwestern; and

3. For 163 shares of the Common Stock of Southwestern, $21 per share.

(d) to issue and deliver to the holders of the 25,896 publicly held shares of the $6 Preferred Stock of Southwestern such number of shares of Five Per Cent Prior Lien Stock of Oklahoma of the par value of $100 per share (not exceeding 25,896 shares) as may be subscribed for by the holders of the $6 Preferred Stock of Southwestern at a price of $100 per share and accrued dividends, each share of $6 Preferred Stock of Southwestern entitling the holder thereof to subscribe for one share of Five Per Cent Prior Lien Stock of Oklahoma; provided, however, that, in case the redemption and retirement of substantially all the outstanding Seven Per Cent Prior Lien Stock and Six Per Cent Prior Lien Stock of Oklahoma should be provided for through a refunding operation consummated on or about the date of the acquisition by Oklahoma of the assets of Southwestern, then the shares to be offered by Oklahoma for purchase by the Holders of the publicly held shares of the $6 Preferred Stock of Southwestern shall be shares of the same class, series and dividend rate as are publicly offered by Oklahoma to accomplish the refunding of the shares of its Seven Per Cent Prior Lien Stock and Six Per Cent Prior Lien Stock now outstanding.

Southwestern proposes to retire all outstanding shares of all classes of its capital stock, in accordance with the provisions of the foregoing, and to dissolve as promptly as may be after the transfer and conveyance to Oklahoma by Southwestern of all the assets of Southwestern in final liquidation of the latter.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

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